ARGUMENTS

OF

THE COUNSEL OF TRINITY CHURCH,

BEFORE THE

SENATE COMMITTEE.

Ogden, Gouverneur Morris

C. VAN BENTHUYSEN, PRINTER, ALBANY,
No. 407 Broadway.
1857.

After the testimony was closed, Mr. Gouverneur M. Ogden, one of the vestry, addressed the committee of the Senate, on the affairs of Trinity Church, as follows:

Mr. Chairman: I appear before the committee as one of the vestry of Trinity Church, to speak to the questions of fact that are involved in this controversy as touching the character and good faith of myself and my associates.

But before commencing this argument, I beg leave to protest, most respectfully, in the name of the corporation which I represent, against the authority of the Senate or of this committee to entertain the investigation of which these proceedings form a part, on the ground that no information expected to be derived from it can be necessary to guide the discretion of the Legislature in any matter within its powers; for the act of 1814, to which these proceedings are supposed to have reference, forms a part of the charter of Trinity Church and cannot be altered, modified or repealed without its consent; and these proceedings are not instituted at the instance of any party who has an interest in the questions involved; and on the ground also that investigations of this kind are productive of great injury to ecclesiastical corporations by involving them in great expense and engaging them in litigations that properly belong to the courts, and which are here conducted without the restraints and without the protection afforded by the rules of legal investigation.

I say this, gentlemen, without intending disrespect to the committee and merely lest perchance the corporation should be involved in any admission through my silence.

There are important questions involved, and if I speak freely and warmly I shall at all events endeavor to say nothing not called for by the performance of my duty, and nothing offensive to any which shall not be necessary to exhibit the motives which have actuated, and the credit which is due to the parties whose names are involved in this controversy as witnesses or actors.

This is not a new thing, and it is necessary in order to explain its present position to refer to a few historical facts. The original charter of this corporation was granted in the year 1697, creating a single church corporation with one rector, one body of church wardens and vestrymen, and one congregation. The church has always contended, from the time at which any question could arise, that under this charter no persons were corporators except members of the congregations of Trinity Church. Then follows the law of 1704, now repealed, which, although it made some alteration in the powers of the corporation, did not add to or diminish the qualifications of corporators. Next the law of 1784, as the church has always contended, did not change the rights of corporators so as to include any others than members of the congregations of Trinity Church.

These are principles, stated very briefly upon which the vestry of Trinity Church have always acted.

In 1813, Trinity Church made an application to the Legislature upon which the act entitled "an act to alter the name of the corporation of Trinity Church in New-York, and for other purposes" was passed, on the 24th of Januery 1814, by which it was declared that only members of the congregation of Trinity Church, with certain other qualifications in the second section of that act specified, should be entitled to vote at the annual elections for church wardens and vestrymen of the said corporation.

Now, certainly, there were persons who thought that the construction which I have stated, the vestry put upon the original charter and act of 1784, was not sound. A class of persons who were interested in maintaining a different construction came into existence when the first church corporation in the city of New-York, independent of Trinity, was created. St. Mark's Church, as would appear from the testimony of Mr. Bradish, page 98 of the first report of this committee, existed as early as 1798; and there were nine such churches in 1814 as appears from the testimony of Dr. Berrian. Yet the practical construction was such, that down to 1814 no persons who did not belong to the congregations of Trinity Church were ever permitted to vote at the vestry elections. This is amply proved by the testimony.

The statements on the other side on this point are very loose. The only reference to it that occurs, is in the testimony of Mr. Bradish, who says on page 95, that the great body of episcopalians

in the city of New-York were not only deprived by the act of 1814 of valuable franchises previously granted to and *enjoyed* by them, but virtually divested of their right of property.

On the other hand Mr. Verplanck and Dr. Berrian, who were members of this corporation in 1811, testify that at an election held in 1812, the first attempt was made by members of other corporations to vote at the Easter elections of Trinity Church, on the occasion of some great excitement then prevailing, and they also say that they were intimate with other gentlemen, members of the corporation at that time, older than themselves, who are now deceased, and that they never heard of such parties ever having been admitted to vote.

We have, moreover, produced in evidence the resolution of the vestry, passed at about the time of this occurrence, in which after reciting that the vestry had been informed that a claim to vote at the elections of Trinity Church had been set up by persons who were members of other church corporations, it was declared in substance, that no one should be admitted to vote unless they were members of the congregations of Trinity Church.

Other cotemporaneous documents establish the same position. In the application of the vestry to the Legislature for the passage of the law of 1814, it is stated that no members of other church corporations have a right to vote at their elections, or regulate the affairs of Trinity Church; that "nevertheless a few individuals belonging to such separate corporations, have recently pretended, to claim that right, and at he last annual election of church wardens and vestrymen of Trinity Church, held in the month of March, 1812, two or three persons, being members of incorporated churches, separate and distinct from your petitioners, presented themselves as voters, but their votes, under an ordinance previously passed by your petitioners, were rejected; and no measures have been yet taken to enforce or establish the right so claimed."

In Col. Troup's pamphlet, which has been quoted by Mr. Bradish, it is stated that no members of other congregations claimed, prior to 1812, and that in March of that year, several persons offered themselves as voters, being members of other corporations, one of whom instituted a suit, and the same person again offered to vote in the succeeding April. (See page 12 of that pamphlet.) There is no evidence as to what became of this suit. It was probably dropped, or a decision upon it would be found.

These cotemporaneous documents have been frequently referred to in controversies before the Legislature, respecting applications for the repeal of the act of 1814, made in 1846-47, to which as it appears in the testimony, the principal witnesses against Trinity Church in this matter were parties. This statement is confidently submitted as conclusive proof that down to the year 1814 no persons were ever admitted to vote at the elections of Trinity Church except they were members of the congregations of its churches; and there can be no controversy about the truth of the position, that since 1814 no such persons have ever been admitted or allowed to exercise that right.

This appears abundantly from the testimony, both of Dr. Berrian and Mr. Verplanck.

In 1813, Trinity Church made the application to the Legislature which resulted in the passage of the act of the following year. They asked that the Legislature would obviate and settle the questions that might arise in consequence of incorporating other Episcopal congregations in the city, and they asked it that strife and litigation might be prevented. In 1814 the law was passed, declaring that none but members of the congregations of Trinity Church were corporators. This state of things remained undisturbed until 1846. Then and in 1847, applications were made for the repeal of the last mentioned law; in 1846 in the Senate and in 1847 in the Assembly. In both cases the applications were unsuccessful. In the last of these, the matter was argued by counsel of high standing on both sides, before the judiciary committee of the House, who unanimously decided against the repeal, and in a report of singular ability, recommended that the prayer of the petitioners ought not to be granted. This recommendation was unanimously adopted by the Assembly.

Thirty-three years had then elapsed since the passage of the law. Now ten years more have passed. The object of the act was accomplished, and during all that time peace and quietness prevailed in the episcopal church in New-York, except when the agitation of this question of repeal stirred the waters of controversy. Now the contest is renewed, but not as before. Then the parties seeking the passage of the measure now sought, came forward openly, with an avowed object. Now no one appears as interested in any stage of these proceedings. There is no memorial. There is no proof of notice of an application for a repeal as the statute requires. Every step is the act of the Senate.

Let me trace these proceedings. It is necessary to exhibit the actors, their motives and objects, and necessary to show the credit that is due to the testimony. The commencement of this proceeding was the original resolutions of the Senate, passed on the 15th of April, 1855. There was no application or representation as the foundation of these resolutions. They were passed in the hurry of business, at the close of the session. I will notice shortly some of the matters asked for by them. Who in Albany could have known that Trinity Church had never built a free church? Who could have known that a return of the churches built within the five years next before the passage of the resolutions would show that Trinity chapel was built within that time at great cost? Who in Albany could have known that to disclose what feeble churches had been aided in the same five years would, probably, exhibit a comparatively small amount expended for the benefit of such churches while Trinity chapel was building? Or who in that city could have told that the appropriations to institutions of charity, benevolenee and learning, made within the *three* years next preceding the passage of the resolutions, would just escape the important and meritorious gift in favor of Hobart Free College at Geneva, with the condition that it should be called by that name and be forever free?

These features show a knowledge and design of interested parties to select for the prejudice of Trinity Church the time within which and the objects to which, the return would show the least, and they are the obvious result of a laborious collection in New-York of rumors, and suspicions, and the complaints of disappointed applicants.

Again, all the gifts required to be returned are those made to churches in the city of New-York. Why? Because the persons who are interested in and have been applicants for the repeal of the act of 1814 have always contended, and must always contend, that the property of Trinity Church is held in trust, for the inhabitants of the city of New-York in communion of the Protestant Episcopal Church. This points out the source of the resolutions. The report of the Church stated its gifts made at other times and to Churches and to institutions situated in the country in various parts of the State. *Now*, the witnesses examined in New-York, state that they have no objections to gifts to the country; yet hitherto they have always declared such objections, and if there be such a trust as they contend for, it necessarily follows that the

gifts hitherto made to the country were all illegal, and if they could be admitted as corporators, under the construction which they advocate, such gifts to the country could never hereafter be made, and the much complained of mortgages, wherever they cover churches out of the city of New-York, must be foreclosed.

From these considerations it is apparent that the resolutions of the Senate—the first step in these proceedings—emanated from interested parties in New-York.

After the report of the Church was made to the Senate, it was, within a few minutes of the close of the session of 1856, without a complaint or memorial from any one, referred to this committee, with authority "to examine into the matters connected therewith during the recess."

The committee came to New-York. It must be acknowledged that there were circumstances which misled the committee. The witnesses who presented themselves before them were gentlemen of great respectability in position; and our own course may have tended further to mislead them. We thought they had no legal power, and being aware of this, they had the impression, doubtless, that we would not appear before them under any circumstances. In this, however, they were in error. For had the vestry understood the nature of the charges which it was intended to bring against them, they would have adopted the course they have now pursued. They relied upon a supposed state of things which it now appears did not exist. They supposed, and were authorized to suppose, that the investigation in contemplation was undertaken at the instance of the Senate alone, and they judged that the most respectful and proper course was for them to leave the committee to their own judgment, without interference or suggestion from the vestry, and to hold themselves in readiness, as they did, to furnish any information that might be desired by the committee. They supposed, also, that the committee would confine themselves to the matters of the report of the church, and they were confident that the statements in that report could not be materially controverted. There was, in truth, no contradiction of that report in any material point, excepting as to the amount stated in the report to have been given for the benefit of St. George's Church in Beekman-street; and the report in this respect has been vindicated by the testimony of Dr. Berrian. They relied, also, upon the committee that they would take none but legal testimony. But in all these respects, as the

sequel shows, the vestry acted in error. The investigation was not at the instance of the Senate alone. The evidence was not regular, but was made up of hear-say testimony of the grossest kind, of rumors and suspicions, and of opinions of witnesses upon matters as to which their opinions were entirely inadmissible; and the committee went out of the report, and under the general authority comprehended in the words, "to examine into the matters connected therewith"—words calculated to comprehend everything and give notice of nothing—charges of partiality, of the exercise of a control over the opinions of clergy and laity, through grants, of mismanagement and concealment in the conduct of the internal affairs of the corporation, and a want of vitality and interest in the ministrations of the Church, were entertained. It is manifest the Church had no notice of such charges and could not anticipate them.

Now, for the first time, appear the real actors in all this. They are the Rev. Thomas House Taylor, Rev. Henry Anthon, Rev. Jesse Pound, Luther Bradish, Robert B. Minturn, Frederick S. Winston, Stewart Brown, John D. Wolf, and Stephen Cambreling. These are now the most important witnesses. In 1846–47 they were open applicants for the repeal of the law, the repeal of which is now sought. Then they had counsel. Now counsel was equally necessary, for it was essential that the legal positions contended for should be presented to the committee. There could be no avowed counsel, because there was no avowed party. So an expedient must be fallen upon to remedy this defect. I can well imagine the conference at which the method of proceeding was resolved upon, at which it became apparent that the legal positions must be presented in some form, and if not by one appearing as counsel then by a witness; and I can imagine Mr. Cambreling as objecting to taking the part, both because he is too good a lawyer and because he was unwilling to appear in that position; and that Mr. Bradish volunteered to act in that capacity the rather because it was the post of pre-eminence. The result is that controverted positions, disproved over and over again, passed upon after careful arguments by counsel far abler than Mr. Bradish, before the committee of the house of Assembly in 1847, and overruled by their decision then, are expected to derive new efficacy supported by an oath, when presented at this day as the ground for the decision of the Senate.

By these witnesses, injurious charges were brought out, and some rumors reaching us that led us to suppose that it might be

important that we should see the testimony thus elicited. We applied to the chairman of this committee (I am speaking from the evidence) for a copy of the testimony, offering to pay the expense. It was refused, and we were told that it could not be allowed until after the testimony had been reported to the Senate. Then came the report to the Senate, and until after that had been presented, the vestry knew nothing of the testimony, nor of the grave charges that were supported by it.

I have gone through this statement, Mr. Chairman, in order to show the concealment used by the parties instigating this movement, which I might almost call fraudulent, which has characterized these whole proceedings. In fairness, they ought to have been commenced by a memorial stating the charges made and the action sought; instead of that, the purpose of the first application to the Senate was concealed ; the after reference was so made as entirely to cover its real object, and the investigation was so conducted and its results were so kept from us as to give, without any power on our part to prevent it, the advantage to the real but unavowed parties, of possessing the public mind completely with an opinion most prejudicial to the character and management of the vestry of the church ; by means of which it cannot be doubted it was hoped to procure the immediate passage of an act repealing the law of 1814.

The honorable Senator, [Mr. Noxon,] a member of this committee, arrested this by procuring us an opportunity to be heard although after the report of this committee had been made. We thank him. We have availed ourselves of this opportunity for the justification of our reputations, and because we would not see the institution of which we are trustees deprived of its rights through unfounded accusations against its management. But I ask the committee to enter upon the consideration of the testimony, bearing in mind that the principal witnesses are the real actors, are the getters-up of the testimony, and of the whole case by means of which they hope to accomplish the object they have in view. That they have testified directly for themselves, and have attempted by their own oaths to substantiate allegations through which they desire to succeed.

The first point of the evidence to which I would call your attention, is as to the assessed value of the real estate of Trinity Church. I understood the committee to intimate that they were satisfied that the reasons given by the vestry for the return of the

assessed valuations, as stated in their supplemental report, were sufficient. I will only then say that as the resolutions of the Senate required the vestry to report the "estimated value of each lot," and as they have reported the estimated value, according to the official estimate of sworn officers, and as, moreover, a new estimate of their own could not be made without differences of opinion of members of the vestry, of such a character as to make such estimate entirely unreliable; and as further, the vestry expressly stated that the estimate they returned was that made by sworn assessors of the city, for the purposes of taxation, they are not justly chargeable either with a misrepresentation of the value of their property, or with a non-compliance, in this respect, with the requisitions of the Senate. If, however, it is deemed by this committee material to state the real value of the land of Trinity Church, whilst the vestry do not object to its true valuation being shown, they desire to see no exaggeration of the value. I must therefore call the attention of the committee to the testimony of Mr. Skidmore in connection with this subject. He points out clearly an error into which the committee have fallen. I may thus state it: The committee have set down the fee as really worth more than five times that amount, which would appear to be its value according to the assessor's estimates. Now as the interest of the tenants is the present interest, and they have until the termination of their leases the possession and enjoyment of the land, if you make the fee worth more, you should make the interest of those tenants worth more in the same proportion. Mr. Skidmore has stated such a proportion, and has shown the error of the committee to amount to the sum of $1,468,105. It is true that to get at the true value of the interest of the tenants based upon the new valuations presented by the committee, a more complicated and accurate process must be gone through with, but the result would not greatly vary, and my object is rather to point out that the committee have made an error to a very large amount, than accurately to state that amount.

But we are charged with a designed omission of large items of our property. These are Church mortgages and the interest of the corporation in St. John's Park.

First Church mortgages. I call the attention of the committee to the important fact which they seem to have overlooked, that mortgages of any kind were not called for by the resolutions of the Senate. The vestry, however, in their report at page 7, made a statement of their productive property, intending to give, and

expressly stating they gave the whole *productive* estate of Trinity Church. This was done, only—volunteered as it was—as an introduction to the subsequent passages in their report, which were intended to exhibit the revenue of the Church, as derived from the productive estate before mentioned, in order that the expenditures which must annually occur, might be contrasted with that revenue, showing a necessary deficiency of upwards of $27,000. Now, the Church mortgages were not included in that statement, because they were not productive. The object and purpose of such mortgages, is distinctly stated in the supplemental report of the Church, in which it is said "they are in reality only held to secure to the permanent use of the Protestant Episcopal Church in the United States, the Church buildings and property, upon the security of which this body have loaned money to other Church corporations for their aid and support."

The report proceeds with a statement which it has been supposed is in conflict with the facts. It says, "The vestry believe that no measures have been taken to foreclose any of such mortgages or to collect interest upon them, although the interest has been remitted upon one or more of such mortgages, when the lien was about expiring by lapse of time, upon the agreement being made to revive such lien."

It has been supposed that other statements contained in the report of the vestry are in conflict with the last above quoted paragraph, and that the mortgages executed respectively by the Protestant Episcopal City Mission Society and the Vandewater-street Church, have in fact been foreclosed by Trinty Church. Now the testimony of Mr. Livingston proves that the report by the Church is in this respect entirely correct. He shows the following to be the facts. Two churches belonging to the last mentioned society were each subject to a first mortgage in favor of the Howard Insurance Company, and to a second mortgage in favor of Trinity Church. The Howard Insurance Company foreclosed their mortgage, not Trinity Church, those held by her. This the vestry had nothing to do with, and could not prevent. But they did prevent the sacrifice of the Church property, by coming in at the sale and purchasing the property for the Churches interested. To effect this purpose it was necessary to bid $10,140.51 more than the amount necessary to pay the first mortgages to the Howard Insurance Company, and the expenses. This belonged to Trinity Church, and to enable the Churches interested to take the title, it was necessary, the money not being paid, that Trinity

Church should give a receipt for it, as if it had been paid. She did so, and aided them further by paying towards the purchase money in cash $2,859.49 ; and then took mortgages, $6,500 on each Church, for $13,000, composed of the sum of $10,140.51, credited on the mortgages of the Mission Society, and $2,859.49 now paid in cash. Here then the Church mortgages were used for and served the purpose of protecting the Church property covered by them. If these mortgages had not existed, more than $10,000 would have been lost to the Churches, which through these instruments was saved.

In reference to the Vandewater-street church, Mr. Livingston also states that after Trinity Church had purchased St. George's Church in Beekman-street, the church of the Holy Evangelists sold, of their own accord, their church building in Vandewater-street, and after paying out of the purchase money the prior encumbrances, paid over the balance of $1200 to Trinity Church in part payment of her subsequent mortgage; and this and a much larger sum besides was expended by Trinity Church for the benefit of the Church of the Holy Evangelist after it had removed to St. George's in Beekman-street.

Thus, in both instances, (of the Protestant Episcopal Mission Society and the Vandewater-street church,) the church mortgages were not foreclosed by Trinity Church, but yet served their purpose of saving in part at least the sums given by Trinity Church, which were immediately devoted by her again to the benefit of the mortgaged churches.

Reference has been made to the case of St. Peter's Church as connected with the subject of church mortgages, and an inference unfavorable to Trinity Church has been drawn from the statement of Mr. Beach. This transaction has been explained by Mr. Moore, a witness. Here, as he says, Trinity Church held a *first* mortgage, and refused on the application of certain creditors of St. Peter's to waive the priority of lien in favor of such creditors, except so far as she had already done by waiving her lien for interest as against the whole principal and interest, (not exceeding one year's interest,) due or to grow due on a subsequent mortgage; stating as a reason that the first mortgage held by Trinity Church was really held for the benefit of St. Peter's, and that her congregation ought, by their individual exertions, to relieve the church from debt. There was no such cold refusal here

as would seem to be implied by the latter clause of Mr. Beach's testimony. The object of the church was only to encourage and excite individual effort for the relief of St. Peter's from her debt, and to take care that the original purpose of this church mortgage should be answered by securing to the use of the Protestant Episcopal Church. the church buildings of St. Peter's, so far at least, as to the extent of the principal of the church mortgage.

It is shown by the testimony that the interest on church mortgages has been remitted when the lien of the mortgages had expired, or was about expiring by lapse of time, in two cases, that of St. Thomas' and Zion Church. In this respect, therefore, the report is proved to be true.

It has also been proved by the testimony of several witnesses that the vestry do not regard these mortgages as productive property, and no interest is ever collected upon them; again conclusively establishing the statement made in the report of the Church. The same witnesses—and I do not wish to consume the time of the committee by referring to the testimony with which they are familiar—show that these mortgages are really held by Trinity Church for the benefit of the churches upon which they are a lien and for no other purpose; and every case of such mortgages which has been mentioned confirms their statement by exhibiting that they really did operate in those cases to the advantage of the churches.

The purpose of requiring these mortgages is therefore sufficiently shown, and as to their effect upon the interest of the churches concerned, and indeed upon their independence, about which so much has been said, I may refer to the testimony of Bishop Potter, who says in regard to them: "These loans were absolute in reality. Nobody ever supposed that the interest or the principal would be called for by Trinity Church. They never have been in a single instance, although the cases have been very numerous, in which such mortgages have been given. When I consecrate a church, I always wish to know whether there be any debt. I never regard a mortgage given to Trinity Church in the light of a debt. I have never perceived, and do not believe that such mortgages in any way affect the independence of ministers and laymen. It is very common indeed, to see the ministers and laymen of a Church subject to a mortgage, voting against measures favored by Trinity Church. In conventions I

doubt whether any one remembers or reflects whether mortgages exist in particular quarters or not. The effect of these mortgages has, I doubt not, been important in preventing the property of Churches from being sold and alienated from their sacred use; and this I have always understood was the object of Trinity Church in requiring them." And Bishop De Lancey states that the effect of taking such mortgages upon the interest and condition of Churches mortgaged, has been "favorable, by preventing Church edifices from being alienated from the holy objects for which they were erected, by encouraging individual members to sustain the Church thus secured to its object, and by being an obstacle, as a first mortgage against further mortgages of the Church for debt. I cannot say that I have seen any moral, spiritual, ecclesiastical or pecuniary evils result from such mortgages in my diocese."

It must, therefore, be manifest that these mortgages have been required to serve a good object, and that such object has been attained.

Now, I submit, that there is no other legal method possible to to be devised by which this object could be attained. Experience shows that the power is in safe hands, and if it be said that there is no legal obligation to confine these mortgages to their original purpose, there is yet a great public responsibility that must always be sufficient.

The next head of omission for which Trinity Church has been blamed, is of her interest in St. John's Park.* The deed under which this interest was derived is dated on the 22d of May, 1827. The main object of this deed was to make St. John's Park an open square for the use of the owners of adjoining lots. The provision looking to its being appropriated to any other purpose, had relation to a very remote contingency,—so remote and improbable, as that it could only have been suggested by the skill of an experienced conveyancer. When, therefore, the report says, and witnesses testify, that after nearly thirty years "it was not remembered" that the contingent interest of Trinity Church existed, they are to be believed. Neither can it be justly said that the value of this interest is $400,000. Mr. Skidmore, after verifying the statements of the supplemental report on this subject, testifes that the "whole number of lots interested

*This matter is stated in the supplemental report of the Church, page 65 of the testimony, so clearly as to be incapable of misapprehension.

in this park is I think sixty-four, of which Trinity Church owns seven, being about one-ninth of the whole. It was supposed on the part of some of the property owners, that they would be able to get from the United States some $600,000 or $700,000 for the property, but I do not know whether they actually had an offer for it or not; but even if sold at that price the pro-rata of Trinity Church would have been about $70,000. St. John's chapel, Parsonage and Sunday School stand on these seven lots." It is, therefore, evident that the value of the interest of Trinity Church, if stated at all cannot be more than between $70,000 and $80,000; the utmost price talked of being $700,000, and the share of the Church being but one-ninth. The object of naming $400,000 is clearly stated, both in the supplemental report and in the testimony of General Dix, to have been to fix a sum as damages which would be sustained, through the injury to St. John's Chapel, and not as a valuation of the interest of Trinity Church, or with any expectation that any such sum could ever be realized.

It is therefore submitted that the truth of the supplemental report on this subject has been perfectly verified by the testimony.

The statement in the report of the Vestry relative to the amount expended for St. George's Church, in Beekman-street, has been questioned by Dr. Tyng, examined in New-York. He says, "that to the best of his knowledge and belief Trinity Church never paid but $25,000 for St. George's Ckurch." Dr. Berrian, however, vindicates the report in his clear testimony on this subject, in which he tells you that Trinity Church not only paid $25,000 in money, but released conditions, the releasing which was of great pecuniary value to St. George's Church, and also relieved the last named Church from obligations to pew and vault owners, which release and relief were expressly valued between the parties at $25,000, and Trinity Church was then allowed credit to that amount on account of the price, $50,000, asked by St. George's Church for its church building in Beekman-street.

Leaving now this matter of statement of property, I call the attention of the Committee to the frame work of the charges against Trinity Church, as contained in the testimony of Mr. Bradish. Promises and representations are stated to have been made by the Vestry of Trinity Church, as inducements for the passage by the Legislature, of the law of 1814. This statement is made the foundation for every other charge. It is alleged that the Vestry have not kept their promises and representations, and

that certain consequences, first affecting her internal condition, and second affecting other Churches, have followed from this breach. These consequences constitute the charges against the corparation; and it is argued that as the promises are broken on the part of the Church, the act of 1814, the promise of the State, is no longer binding and ought to be repealed.

Now, as to these alleged promises or representations, Dr. Anthon says that to calm the fears of the Legislature, the Vestry "promised that their funds should be applied to the building of Churches, from time to time, as the increase of population demanded; the control of such churches to be relinquished to independent vestries, etc., suitable endowments to be made;" and Mr. Bradish says, quoting from the pamphlet of Col. Troup, "judging from the past, it is morally certain that the future increase of the population of the city will strongly recommend to the corporation of Trinity Church the policy of dividing its corporators and setting them off in separate Churches, with suitable endowments; and to enable the Vestry to do this in a mode free from all legal doubts, and with the assent of a majority of the corporators to be set off, is a fifth object of the bill." "Again," quoting from the same pamphlet, "the bill when passed into a law would have the happy consequence of enabling the Vestry of Trinity Church from time to time as society shall advance, to separate Churches with the consent of their congregations, and to endow them with competent estates. No power can be more congenial than this to the spirit of our republican systems."

It is to be observed in relation to this pretence, first, that there was no promise here of Trinity Church by which she bound herself to any particular course of action; that in the pamphlet quoted, Col. Troop gave only his individual opinion, without having, or pretending to have any authority from the Church, or to speak in its name. He wrote this pamphlet, as he expressly states, at the request of the council of revision, made to him personally in order to elicit his individual opinion.

Second: It is not pretended that there was any misrepresentation of fact or fraud, and the language of Col. Troup clearly shows that at most, he stated a policy which he thought *would probably* be carried out. Now, if any reliance had been placed upon expectations which are now supposed to have been excited by what Col. Troup wrote, why was not a proviso inserted in the act to cover the case? And even supposing that Col. Troup, acting as

agent or counsel for the corporation, had stated previous to the passage of the act what was the course of the management of their affars, which Trinity Church intended to pursue after the passage of the act, it is a new doctrine, I submit, to contend that this can be grafted, with all the force of a proviso, upon a law passed after such representations were made.

Third—But there is not a word of truth in the position that any promises were made.

One object of the law of 1814 was to enable Trinity Church to separate any of its chapels, and to endow them with competent estates. I read now from the fifth section of that law: "And be it further enacted, that when and as often *as it shall seem expedient* to the said Rector, Church wardens and vestrymen of Trinity Church in the city of New-York, to divide the congregation or corporators belonging to the said corporation, it *shall be lawful* for them so to do, by setting apart as a separate Church, any of the Churches or chapels that may belong to, and form a part of the said corporation; provided the same be done with the assent of a majority of the persons entitled to vote as aforesaid, who shall belong to such Church or chapel intended to be set apart," etc.

Now, this section manifestly gives a *power* to the vestry to do what the section authorizes, and leaves it entirely to their discretion to exercise it or not.

Look then, at the passages quoted from Col. Troup's pamphlet in connection with the provisions of the section just quoted. He says, "it is morally certain that the future increase of the population of the city will strongly *recommend* to the corporation of Trinity Church, the policy of dividing its corporation," etc.; and "to *enable* the vestry to do this in a mode free from all legal doubts, etc., is a fifth object of the bill." That is to say, the power ought to be given, and it is his opinion that it will be exercised. And in the same way, in the other paragraph quoted by Mr Bradish, Col. Troup says that "the bill when passed into a law would have the happy consequence of *enabling* the vestry of Trinity Church, from time to time, as society shall advance, to *separate* Churches with the consent of their congregations, and to endow them with competent estates. No *power* can be more congenial than this to the spirit of our republican system."

It is manifest, therefore, that Col. Troup was only urging that the power ought to be given in order that the Church might, if it saw fit, exercise it, and he made no promise in any form, that they would exercise it. Nor does it appear that any congregation of Trinity Church has applied to be set off.

The paragraphs which I have quoted contain all the representations or promises, which are alleged to have been or were made by Trinity Church or any one for it. Is there any thing here, even holding out the expectation in any form, that Trinity Church would endow with land, Churches not forming part of her own corporation? There is not a word that can bear any such construction, and yet Dr. Anthon tells us, in the paragraph before quoted from his testimony, "That the vestry promised that their funds should be applied to the *building* of Churches from time to time, as the increase of population demanded; the control of such Churches to be relinquished to independent vestries, etc., suitable endowments to be made"; and Mr. Bradish says: "that a return to the policy and practice of endowments in landed estates, as contemplated in the act of 1814, and was promised as an inducement to the passage of that act, can alone give a real and healthy development of Church growth and parochial independence."

These statements are in direct conflict with the fact, for Col. Troup expressed no opinion, and much less made any promise, as to the probable or intended course of the vestry in relation to the endowment of churches not her own; and this is an instance of the recklessness with which these witnesses have given their testimony. And it is the more important to point out their inaccuracies in this respect, as the propositions which they have thus sworn to, make the whole flimsey basis upon which the case (theirs if any body's) rests.

Again, to point out another instance showing the entire unreliability of the testimony of Mr. Bradish, I call the attention of the committee to the fact that the act of 1814 had passed both houses on the 2d of April 1813, [see p. 95 of Mr. Bradish's testimony in the first report of the committee] and the pamphlet of Col. Troup is dated on the 6th of September, 1813, more than six months after the act had passed both houses. Yet Mr. Bradish says [p. 101 of first report of this committee,] that as an inducement to the passage of the act of 1814 it was urged "as morally certain that the future increase of the population of the

city would strongly recommend to the corporation of Trinity Church the policy of dividing its corporators, and setting them off in separate churches with suitable endowments, and to enable the vestry to do this in a mode, free from all legal doubts, was an object of the bill. *The bill was drawn and passed accordingly.*" Yet the truth is that the bill was drawn and passed both houses six months before Col. Troup said any thing respecting it in the paragraph alluded to, and from which Mr. Bradish derives his authority.

Mr. Bradish says "that the action of the vestry previous and subsequent to the passage of the act of 1814 gives *peculiar significance* to those paragraphs in Col. Troup's pamphlet." Under this beginning it is sought to be made out that the church has not given her lands to other churches, and from the policy of giving money certain consequences have flowed. These consequences constitute the charges against the vestry; and these divide themselves into such as affect the church at large, and such as affect the internal concerns of Trinity Church. Of those that relate to the church at large I know propose to speak.

As to gifts by money grants, secured by mortgage or otherwise, or by stipends, Mr. Bradish says that, "it is believed that they interfere with"—Dr. Anthon, "that they seriously impair"—and Dr. Taylor that "they are fatal to the independence of the parishes thus aided." Dr. Taylor, moreover, speaks of the "overwhelming influence" exerted by these means; and to support his assertion he retails a hear say story of what a clergyman told him, that a churchwarden had told him, that the comptroller of Trinity Church had told the churchwarden, without name or date! This is the testimony against us.

Does the Church really exercise any such influence, or control the opinions of clergymen or laymen of Churches which she aids, or has aided in any form? I refer to the testimony for a complete answer to this question.

Mr. Skidmore, who has been a member of the vestry for ten years. and of the standing commitee for six to eight years, when asked if the vestry had in any way endeavored to control the free opinions or acts of vestries or ministers, who had received or were seeking aid for their Churches, answered "not to his knowledge." Dr. Haight when asked as to the effect of gifts of money in any of the forms mentioned, upon the pecuniary independence or free-

dom of speech or action of the clergymen and vestries of Churches aided, answered as follows:

"I do not think that the aid bestowed in any of the forms mentioned has had the slightest effect upon the independence of speech, or freedom of action of the clergymen and laity of the parishes aided. I have had some opportunity of noticing the course pursued by clergy and laity in our diocesan conventions, having been for twenty years assistant secretary and secretary of the same, during the greater part of which time there prevailed great diversities of opinion. In looking over the list of parishes whose Churches have been mortgaged to Trinity Church, I find eight, the clergy and lay delegates of which, for a series of years, in all leading questions, spoke and voted differently from the Rector and the lay delegates of Trinity. Two of these are mortgaged for $25,000 each, two for $20,000, one for $5,000. The other three for smaller sums. So also in regard to the Churches which have received grants of land and money, or annual stipends, I find nearly thirty which have taken the same independent course in convention, without regard to the course of Trinity. My opinion of the clergy and laity of the diocese of New-York is such that I do not think it would be practicable for any corporation to buy their opinions or their votes. Of the Churches last referred to, six received gifts of land and money, twelve gifts of money alone, and two received gifts of land and a stipend; three received gifts of land alone, six received stipends alone. My knowledge of the votes of these clergy and lay delegates of the several Parishes, was derived from the fact, that for a long series of years it became my duty at every convention to call the ayes and noes on very many questions."

Bishop Potter also speaks to the same point, when asked a similar question, and says:

"I do not see why the assistance spoken of in the question, should be injurious to the parishes in the respect mentioned in the question, nor do I believe that it has been; but on the contrary beneficial. It has encouraged parishes to exertion, in many instances, when otherwise they would have been unable to maintain themselves. The feeling often has been, I think, that the parishes receiving such aid have laid themselves under a special obligation to exert themselves. If it was an absolute grant with a mortgage, it did not differ essentially from any other gift,

except the obligation just spoken of was incurred ; if it was an annual stipend it was like the stipends granted by the Missionary committee of the diocese, and those annual stipends have been provided for by the collective wisdom of the Church in the diocese, as a part of her organized system, which must imply an opinion of the whole Church in the diocese that that mode of rendering assistance is a useful mode. I have known many cases where a Church being able to establish itself in a given community, or being able to maintain itself, seemed to depend upon the assistance it received from Trinity Church."

I can refer also, in connection with this point to the strong and satisfactory statement of Gen. Dix.

It seems, therefore, that Trinity Church neither makes its gifts with the view of exercising any influence over the churches aided, nor does, nor can exercise any control by such means.

We are next told that Trinity Church is influenced by partizan considerations in making her gifts to other churches. The witnesses who were called to prove this were the Rev. Jesse Pound, the Rev. Dr. Anthon and Mr. Wolf.

The testimony on this subject, produced on the part of the church can leave no doubt of the entire falsity of this charge, commencing with the solemn denial of the venerable Dr. Berrian, the rector, " as a christian man and a christian minister, I declare that I have never heard one [charge] which appears to be more unfounded and unjust. I have for twenty-eight years, as assistant rector and rector, presided at the meetings of the vestry, and I have never heard a syllable from any member of that body, in any application before them, which would warrant the charge, that it would be determined on partizan grounds. What influence the difference of opinions may exert on individual minds, it is impossible to tell, but I know very well that the question never comes up, nor is ever alluded to in the vestry itself."

Mr. Skidmore, of the standing committee, gives a similar answer, and adds; "if I thought that any application, in all other respects meritorious should be rejected on the grounds of its being low church, I should resign my place as a member of the standing committee.

Mr. Moore, who was on the standing committee, and was a member of the vestry for eighteen years, confirms this, and adds that every case is discussed and decided upon its merits. General John A. Dix, the Hon. Gulian C. Verplanck and Mr. John R. Livingston, none of whom are members of the standing committee, make the same statement.

But though these witnesses have proved, under the solemnity of an oath, that all grants are made by the vestry upon the merits of each case, without any regard to the party character of the church applying for assistance; particular cases of church applications have been relied upon to show that the *action* of the vestry indicates that they are in reality influenced by party considerations. I will, therefore, refer to the cases mentioned.

St. Jude's. It is established by the testimony, and I need not refer to it more particularly, that there were Churches in the immediate neighborhood, one especially, long and well established, so near as to show that this Church was unnecessary. The Rev. Mr. Pound speaks of this and also states that after the application of St. Jude's to Trinity was made, the Rector became a Presbyterian. These facts taken in connection with the state of the finances of Trinity Church, which rendered it impossible for it to grant more than a few of the church applications pending before it, are sufficient to show that no inference can be drawn that Trinity Church refused this application on party grounds.

St. Matthew's. This Church, at the time ofits application was in a low condition, which the Rector of Trinity then knew, as he tells you. Its minister testified before this Committee that it had then "died out." The Vestry of Trinity Church were peremptorily required to pay its debt, stated to amount to $4,800, $1,200 a year for the support of the Church, and whatever might be necessary for repairs. This was an expenditure, which, under the circumstances of the case, it was neither practicable nor useful for the Vestry to undertake; and independently of financial considerations, and the doubt whether aid if rendered would revive this sinking Church, the Committee may perceive from the guarded answers of Bishop Potter and Dr. Berrian, that there were circumstances of a different kind which showed that it would not have been wise to yield to the application. Of those

circumstances it would not become me, any more than it would them, to speak. Moreover, the church property was not sacrificed, but reverted, as Mr. Pound tells you, to the donor, Bishop Eastburn.

St. Luke's. Much has been said of the large expenditures and donations made for this Church. Mr. Verplanck has detailed the peculiar circumstances attending this case. The church is situated in the midst of the leased lots of Trinity Church, with her tenants surrounding it. Its congregation is poor, and utterly unable to support it. The Vestry have always regarded it their duty to maintain this Church, in so far as its own people might be unable to do so. Their ability has grown less year by year, owing to the removal of the wealthier classes to more desirable parts of the city; and the necessary dependence of St. Luke's upon Trinity for aid has, therefore, yearly increased, and probably will still further increase.

St. Timothy's: The application on behalf of this Church required a large expenditure, or the incurring obligations to a large amount. It was in reality, and was felt to be, a noble proposition on the part of the Rev. Mr. Howland. It was a subject of repeated discussions both in the Vestry and in the Standing Committee. It was twice reported upon and twice referred, and finally the report of the Standing Committee on this subject was laid upon the table, and has not yet been acted upon. If in any case the Vestry could be influenced by partiality it would have been in this. Mr. Howland is a high churchman; and not on that account, but on account of the generous, self-sacrificing charity which marked his proposal, and of great personal regard for its author, every Vestryman was moved, and none more strongly than myself, to co-operate with him in his plans. But the condition of the affairs of Trinity Church, an insuperable obstacle, has hitherto prevented compliance. The action of the Vestry upon this application, brought here as an accusation against us, ought to be viewed as strong evidence of the impartiality of the Vestry.

In answer to all that I have put forward to justify the vestry against this charge of partiality, it may be said that the acts of

that body prove the accusation because the amount of gifts to low Churches does not bear a due proportion to the amount given to high Churches. But this is a question of motive. By what motive were the vestry actuated? And it is impossible with justice to discredit the solemn declarations of the gentlemen concerned when they say that they were influenced only by a consideration of the merits of each case. If there were any disproportion, it must be regarded as only accidental, because it cannot with certainty be reasoned that it was designed. For instance, a case might be supposed, when at the same time there were ten applications before the vestry, five of one class of Church opinions, and five of another. Five, all of one class might be granted on their merits solely, and the other five rejected solely on the same ground. The conclusion therefore is not sound that the vestry must have been influenced by partizan feelings, because (as Dr. Anthon says,) from 1835 to 1847 they granted more in proportion to high churchmen than to low churchmen.

Indeed, if a long instead of a short period of time be taken for a comparison of the gifts made to Churches, of the class called high Church, with those made to Churches of low Church opinions, no such disparity as has been relied upon would appear, for Dr. Berrian says: "It would be exceedingly difficult to make a comparison from actual facts, but I think I may venture to say very safely, that if the aggregate amount of the favors and benefits received from Trinity by those Churches whose rectors and vestries are supposed not to sympathize with her in her views, were set against the amount received by those whose rectors and vestries cordially do, that the groundless charge of undue partiality would be still more apparent. In this comparative estimate, however, must be included what the coporation has done for St. Mark's Church, Grace Church and St. Georges, whose rectors, if we may judge from their evidence in the present inquiry, appear to have had no great good will towards Trinity Church; though with more reason for kind feelings and grateful recollections than all others."

The next charge is that stipends have been reduced. Dr. Tyng says that he has heard of no instances where they have not been reduced, and he has heard of several where they have. This is mere hearsay ; but it is disproved.

Mr. Skidmore, Mr. Moore, and Mr. Livingston, have all testified on this point, and they say that the aggregate amount of stipends has, as they believe, not been reduced ; that the stipends have indeed been reduced and sometimes wholly taken away from those churches that could afford to do without them or with a less amount: the rule being to give these allowances, for the support of the clergymen, to the poor churches and take them away from the rich, and to give according to the needs of each church.

The comparative statement contained in the testimony of Gen. Dix confirms these statements, and shows that for only two of the ten years last past, were these stipends larger than they are now in their aggregate amount.

Complaint is made of the frequency and facility of refusal, and of ungracious and wearisome reluctance in granting, to increase the sense of obligation.

This is entirely untrue and arises only from an exaggerated notion of the means of the corporation. Mr. Skidmore tells you that there are numerous and continued applications, so that never can more than one in ten be granted. His testimony has been misrepresented in the public prints, and therefore I read his answer on this subject. He was asked, is it true that aid was given to churches reluctantly and offensively? and replied, "Reluctantly only when our sympathies were running away with our better judgment; never offensively, I should hope. I would like to say in addition that applications were very numerous and many of a highly meritorious character, and which we were obliged most reluctantly to refuse, and which enlisted our strongest spmpathies. When we had the means at our disposal, we took great pleasure in granting the applications."

Mr. Moore makes substantially the same statement.

I submit that the truth is apparent from the whole testimony that in making grants to other churches, the vestry have performed its duty with a sincere desire and effort to do the most good in its power, and in the right quarters ; and that this charge results from suspicion merely, and from the discontent that might be expected to be exerted by the necessary refusal of a large number of applications, and by unavoidable delays in granting others.

I have now finished my remarks upon the charges against the vestry of mismanagement affecting the Church at large.

We are next told that the altered policy, (altered since 1814,) of giving money rather than land, has produced disastrous results on the parish itself. Some of the charges under this head related to the administration of its estate and the management of its internal affairs by the vestry.

And first, as to the alleged unsuccessful attempt to see a list of the corporators. There was, indeed, one such instance, and one only—that of Bishop Wainright. Dr. Higbee testifies that there was but one application, and that made by Bishop Wainright, both on behalf of himself and Dr. Higbee, and it certainly appears that Dr. Berrian, owing to his desire not to interfere with the duties of the officer having the custody of the list did not show it when requested so to do ; and that its inspection was also refused, not by the Comptroller, but by a subordinate clerk in the Comptroller's office. It is, however, sufficient to prevent any imputation against the vestry, growing out of this occurrence, to refer to the testimony of Dr. Berrian, Mr. Skidmore and Mr. Moore, by which it is clearly proved that there was never any rule or order of the vestry, at any time, justifying such a refusal; that it was done entirely without authority; and that as soon as it was brought to the attention of the vestry they rebuked the action unanimously, by declaring that opportunity to make the inspection should be afforded to Bishop Wainright, and that he should be allowed to take such copies or extracts as he might think proper. A copy of the list was afterwards sent to him. It is also proved by the same witnesses, or some of them, that the books containing the names of the corporators are always open to inspection, and at every election are taken to the place where the election is held. It appears, moreover, from the testimony, both of Dr. Berrian and Dr. Haight, that every care is taken to add the names of new corporators.

The vestry have also been censured because it appears from the testimony of Mr. Wolf, (the only witness on this subject against the vestry,) that some of the corporators being pew-holders are dead, and some have removed from the city. The supplemental report of the Church states, that the lists of corporators therein given were believed to be accurate. Dr. Haight

has explained that it is difficult even for the officiating clergyman to ascertain whether pew-holders have died or have left the city, and as Mr. Wolf merely says that there are *some* names of deceased persons and of persons residing out of the city, it is very likely that the error is small in amount, and it is certain that no want of good faith can be justly charged upon the vestry in this matter. The mistake might readily occur, notwithstanding that reasonable care was exercised.

The next complaint is of the letting of pews in Trinity Chapel, that these were so let that the lessees of the pews could not be corporators by virtue of their being pew owners. Such an arrangement was certainly made by agreement between the lessees of the pews and Trinity Church. The circumstances which induced this arrangement have been very clearly explained by Mr. Skidmore. They were as follows: No person can become a corporator of Trinity Church as a pew holder without the consent of the vestry, because no person can hire a pew without their consent. And ordinarily these hirings take place by private arrangement between the vestry or their agent and each individual applying for a pew; thus affording an opportunity to ascertain the character of each applicant. But in the case of Trinity Chapel the pews were leased at auction, and as any person might bid, it was impossible to make any discrimination as to persons who should be allowed to take pews. And considering the importance of the interests involved, and the facility afforded by an auction sale for combinations, and for the introduction of improper persons who might be even of a different religious denomination, it seems to have been both natural and proper that some measures should have been adopted to guard against the evils which might otherwise have resulted. For these reasons the arrangement which is censured was entered into. It was but temporary, by the letter of the agreement to extend for not more than two years. No one was injured by it, nor deprived of any right that he could have possessed as a pew holder had his lease contained no such provisions; for, as testified by Mr. Skidmore, none of the pew holders in Trinity Chapel would have been entitled to vote at the next Easter election after their hiring, for the reason that they had not then been members of the congregation for one year. And when it had been ascertained that the apprehended danger had passed, before the first term of letting the pews had expired, the arrangement complained of was vaca-

ted, and the lettings of the pews were made in such form that the pew holders had a right to vote. Mr. Clayton is mistaken when he supposes that he is not a corporator as a pew holder of Trinity Chapel. On the very day on which he testified he was a corporator, being then a pew holder and having been a member of the congregation for one year.

Another charge, to the prejudice of the Church, was, that the vestry had required that all persons desiring to vote should give written notice of such desire to the Rector. Mr. Wolf tells us this, but he must have been under a misapprehension, which is not improbable, as he speaks of what occurred in the vestry while he was a member of it, which he ceased to be ten years before he testified. On the other hand, Dr. Berrian, who as Rector of the church, must have known of such a regulation, if any had existed, testifies that he does not know of any such requisition.

The next complaint is that "there is so little interest in the vestry elections that, in eight out of the past ten years, an average of hardly one in ten of the corporators cared to appear; and on one occasion only twenty-three persons voted for twenty-two wardens and vestrymen." Any one who knows anything about the elections of church corporators must be perfectly aware that this is a very common state of things and exists in all parishes. Bishop Potter and Dr. Haight have proved this very clearly. The latter says: "That at the elections for churchwardens and vestrymen of another church in New-York, (of which he was the rector for ten years,) of which there were from 100 to 150 corporators, although he presided at all, he never saw more than four or five voters at any election, except on one occasion of great excitement when there were thirty." And Bishop Potter speaks of the practice at St. Peter's church, Albany, of which he was rector for 22 years, where with 100 or 125 corporators, there were at the Easter elections on an average only from six to ten persons present. And both these witnesses say that this is the ordinary condition of things throughout the diocese, and is generally a favorable indication as showing that the corporators are satisfied with the administration of the affairs of the parish.

We are next told that the "apathy" which is supposed to be indicated by the fact that few voters attend the elections, extends to the vestry itself, and it is said that every thing is left to the standing committee of the vestry, and no one else knows anything about the affairs of the Church.

There can be no doubt left in the minds of the committee on this subject. The Rector, Mr. Skidmore, and other members of the vestry, have shown the course of business. The standing committee have power only to lease lots; all other matters which they take into consideration are first brought up in the vestry and referred to the committee. At every meeting of the vestry, as part of the order of business, full minutes of the standing committee, containing in detail all their actions, are read; their recommendations are then passed upon in that body after being freely discussed, and in many cases are overruled.

This committee have had the most satisfactory evidence that members of the vestry, not on the standing committee, do know something of the affairs of the Church. Three gentlemen, not of that committee—John A. Dix, Gulian C. Verplanck, and John R. Livingston—have been examined. It must have struck this committee that these witnesses exhibited not only great and accurate knowledge of the business of the corporation, but a warm and active interest in the performance of their duties. And if any member of the vestry lacked a sufficient knowledge of its concerns, it must have been through his own fault; he had the same opportunities for information as others. It has been proved that access to books and other means of knowledge, is open to all vestrymen, that an account, showing the receipts and expenditures and condition of the corporation, is made by the Comptroller annually and carefully audited by a committee appointed for that purpose, who have every facility afforded to them for testing the accounts, which are afterwards subject to the inspection and examination of all the members of the body. When I observed the testimony of Mr. Curtiss, a member of the Vestry, who is represented to have said in his testimony that the auditing committee have access to all the books referred to in the annual report, and such only, I knew that he could never have meant to be understood that ac-

cess to any books was refused him ; and the idea that it could have been refused, is in conflict with all the other testimony. An ineffectual attempt to procure the attendance of Mr. Curtiss before the committee was made, but he excused himself on the ground of business engagements ; and in the absence of any power in this committee to compel his attendance, we were unable to offer an explanation until the receipt of his note, excusing his non-attendance. This has been presented to and filed by the committee. It will be found appended to the testimony. From this it appears that he did not mean to be understood that he was refused anything, but that the Auditing Committee had access to all sources of information to which they wished to resort.

But Mr. Bradish compares the old policy with the new, and tells us we should make independent Parishes, like St. George's, Grace and St. Mark's, (all built and endowed with land by Trinity), give them land enough to make them independent, and all the dreadful evils he thinks he sees would not exist. Let me make a contrast between the policy of amply endowing Churches with land, prevailing before the year 1814, and the policy of making gifts in money, prevailing since that time.

Prior to 1814, there were grants of 318 lots, by means of which were endowed three charitable and educational institutions—Columbia College, Trinity School, and the Society for promoting religion and learning ; three amply endowed Churches—St. Mark's, Grace, and St. George's ; and twelve other Churches to which were given lots of land in much smaller proportion than to the three Churches last named,—thus making eighteen Churches and institutions benefited by the gift of 318 lots.

One thousand and fifty-nine lots have been sold by Trinity Church, and out of the proceeds derived from the sale, she has given away for the benefit of other churches and institutions $1,287,392.75. Suppose these lots had been given for endowments—if these were as liberal as those made before 1814, the 1059 lots would have served to endow, at the most, forty-four churches and institutions, and indeed it may be doubted whether they would have sufficed for that purpose; for the three churches above mentioned to have been amply endowed, were not only given land, but were built by Trinity Church, and the twelve other

churches were only assisted, by the lots granted, to a very limited extent. If, on the other hand, lots to the value of $50,000, a small allowance for an endowment, had been given to so many churches as the last mentioned sum would have sufficed for the endowment of, on Mr. Bradish's principle, not more than twenty-five churches could have been made independent through these 1059 lots.

But what has Trinity Church accomplished by the sale of these lots, and by granting to other churches and institutions the moneys received from the sale? By this policy deemed so unwise, St. George's, Grace and St. Mark's Churches have been built; more than two hundred other churches have been aided, upwards of one hundred and fifty of them in the country; Hobart Free College, at Geneva, has received an endowment of $3,000 a year, on the condition that it shall be free to all; the Theological Seminary and Missionary Boards have been assisted; an Episcopal residence has been purchased; infirm clergymen and families of deceased clergymen have received annuities and other assistance: and these are only some of the results of the change of policy which has been complained of.

The object of this change of policy is manifest. It was to distribute the fund to be derived from the gradual disposition of the real estate amongst many churches and institutions, doing for each only what it could not do for itself, and looking to the probable beneficial results in each case, rather than to make a few favorites rich and independent; to encourage individual effort by timely and judicious aid in every quarter, in city and country. If the other policy had been followed, the property would have been distributed long ago without provision for the future, and churches coming into existence afterwards could have had no help.

Take then these facts: Sales of the real estate have been made from time to time, so that now only one-third of the original estate remains—large annual deficiencies during the last ten years have been occasioned solely by the gifts of the Church—there is pressing need for larger expenditures in her own parish, and the question is answered, "do you think that Trinity Church has done her utmost to make the capital of that corporation available for the founding, or support, or promotion of religious, charitable, or educational institutions, or purposes?

This question is extracted from the report of the Church. How did it there occur? It occurred in this way. The report showed how Trinity Church had been in the habit of spending her capital year by year for the purpose of assisting by gifts of lots or by proceeds of sale, as opportunity offered, other Churches in the city of New-York and in various parts of the State, and to found and aid by the same means, institutions of learning or charity, or to contribute to the maintenance and support of the organization of the Church in this State—thus reducing her estate to one-third its original extent; and that she had, moreover, incurred a large debt, mainly in order to meet the pressing needs of other Churches and institutions, which must be provided for out of the proceeds of sales. Then she claimed that this statement would show that her vestry had done their utmost to make the capital of the property of this corporation available for the purposes mentioned in the above quoted question. And yet this question was asked over and over again, of the witnesses examined in New-York. What knowledge of facts had they to enable them to answer it understandingly? It does not appear that they had any. They were not even examined as to the facts that might have been within their knowledge. Of what value is such testimony? And even if they were acquainted with the facts necessary to form a judgment, the testimony would not have been admissible because they were not called as experts, and it was for the committee, and the committee alone to come to the conclusion on the facts presented to them. None of the opinions of the witnesses, therefore, on this subject deserve the least consideration.

The truth is, that there is a class of persons in the city of New-York who think and claim that all the property of Trinity Church belongs not to that corporation, but to all persons there residing in communion with the Protestant Episcopal Church, and who entertain grossly exaggerated notions of the value of that property; we may tell these gentlemen over and over again, in answer to their applications that her debt is enormous, and that it is impossible to meet the demands that are made upon her; but it is of no avail. And if you were to propose to all of them the question to which I have objected, you would get from all the

same answer which was elicited from so many witnesses in New-York. They would speak from their prejudices; and this is the key to the correct appreciation of the whole evidence against the Church.

And let me in this connection call the attention of the committee to the witnesses that are supposed to substantiate the charges against the vestry. Three of them are assistant ministers of Trinity Church who have come to Albany to explain their testimony and have vindicated the Church; two are vestrymen who spoke of matters since explained; eleven others testified, merely, as to the values of lots; Clayton as to the lettings of pews in Trinity chapel; Wiley and Webb as to immaterial matters and Dr. Muhlenburg, whose motives no man would impeach, testified as he himself says, on information merely, so far as concerns any facts in dispute, and certainly under an entire misapprehension of the ability of Trinity Church. Leaving out those I have just named, all the other witnesses are of two classes and of two classes only. They are clergymen who have applied on behalf of their Churches to Trinity Church for aid and have been unsuccessful in their applications; or they are parties to this controversy, whom it suits now to remain concealed, but who were engaged in the same contest in 1846-47, as appears in evidence; and who it may be seen by the public prints are at this moment the most active in the same attempt which was made in those years, with the exception of Dr. Tyng, who, not then in New-York, was not on the former occasions a party, but is now among the most violent. They sought, under cover of the clamor they intended to raise, and the popular prejudice they hoped to excite, to procure on the instant the repeal of the act of 1814. Actuated, then, by the strongest interest, and, if there is any force in my comments upon the course of these proceedings, attached with all the blame and odium that ought to fall upon the authors of the present attack, they came before the committee to testify to suspicions, rumors and hear-say, attributing unworthy motives to gentlemen, if not so high in position, at least as respectable as themselves. That they are gentlemen of respectability and character, I admit, but their positions cannot justify disreputable conduct, though prompted by party prejudice and narrow, distorted views.

Several of the gentlemen whose names I have here written and have read to the committee as really the actors, are men of large estates, and I undertake to say that three of them are worth

together half the value of the property of Trinity Church ; and when they come and tell us—as Mr. Minturn has done—(himself noted for his liberal charities) that because Trinity will not give, others refuse, it is no justification of the charges they make. They complain that we decline to do what we have not the power to accomplish, and because we cannot respond to their demands they withhold their own charities. And who amongst the clergy complain at our want of care for the spread of the Church? It is remarkable that they are the Rectors of those churches for whom Trinity Church has done the most—of St. Marks, St. George's, and Grace! Churches made independent and rich by her gifts.

Next it is said—most monstrous slander of all—that Trinity Church has totally neglected the wards of the city inhabited by the working classes, and it is intimated that the "general torpor" extends to the ministrations of the parish.

Gentlemen, if there is any thing proved during this examination of a satisfactory character, the evidence on this point is most conclusive. Every other Episcopal Church formerly situated in the lower part of the city is gone. St. George's left Beekman-street, and to preserve her church edifice to the service of God, Trinity was obliged to pay her $50,000. Grace went also, and they both abandoned, to the care of Trinity Church, the districts which they left. These churches were in a part of the city which is now occupied by the poor or by individuals of very moderate means, and the places they left we now occupy alone ; and having thus themselves abandoned them they now come and complain of us that we are doing nothing for the poor! But the Churches of Trinity remain. She has not sold them. Trinity Church, the cost of which has been made so prominent, by its architectural merit and beauty, invites and attracts the poor to the worship of their Creator. St. Paul's and St. John's are maintained. Every arrangement is made to encourage the facile approach of the poor. Substantially these churches are free to them, there are so few paying pews in Trinity and St. Paul's, that the pew rents in the former do not much exceed $150, and in the latter $260. In each of her churches Trinity maintains two clergymen, who, with lay assistants, are continually visiting the poor, to ascertain their wants, spiritual and temporal—baptising them, marrying them, burying them, serving them from the cradle to the grave ; offering them advice and comfort and consolation in their distress, and giving them food and clothing. And all this is done under

a well organized system. Nor is this all. The emigrant when he lands at Castle Garden is visited by a clergyman of the church, and when sick at the hospital at Ward's Island, is there also under the care of a clerical agent of Trinity Church. We are amongst the poor, the friends of the poor. Gentlemen, this is no idle tale. It is written here in this volume of testimony under oath.

They presume to taunt us that the parishioners of Trinity Church do not give in charity; they, wealthy members of wealthy congregations, living with the rich, tell us that our poor congregations do not give as much as they. I venture to say that our congregations have given as much according to their ability.

But, why gentlemen are we here? We have no interest in this matter,—we stand here not in our individual capacities; we have nothing to gain, nothing to lose, by the repeal of the act of 1814. But we represent the corporators of this Church, between whom and the State there is a solemn contract of charter. Who are these corporators? The poor men I have already alluded to in the lower part of the city; they are corporators by receiving from the hand of the clergy of the Church the holy communion. They are to be injured, not we. You are asked to establish a state of things that will bring strangers into the fold of Trinity,—a state of things that would bring strangers from other parts of the city to divide this property amongst them, and then Trinity Church—if such a thing were possible, but it is not—and all her establishment in the lower part of the city would cease, and her worthy but independent people would be left in utter destitution, so far as regards their spiritual instruction.

We are told, among other things thrown into the case, that leasehold property in the city of New-York produces inferior improvements and injures property in its neighborhood, suggesting, it must be presumed, this as a reason for taking away leasehold property from its rightful owners and giving it to others, that they may as fast as possible change its character. I know that this committee and the Legislature have too much respect for the rights of property to listen for a moment to such a suggestion, or to regard it, except with the contempt it deserves;

it shows, however, the nature of this contest. But this statement, worthless as it is, is remarkable, coming from any gentleman living in the city of New-York and conversant with the facts. The testimony refutes it; we have instanced the Sailors' Snug Harbor, Columbia College, and Spingler estates, all leasehold, all well improved and all favorably affecting property in their vicinity, and this from the time they were first built upon. The character of the improvements depends not at all, in New-York, upon the land being leasehold or in fee, it depends upon its situation; and this pretence is as false as it is wicked.

Now, gentlemen, all the principal witnesses in this case, who appeared before you in the city of New-York, were players at this game in 1846 and 1847; except one who has since come upon the field, or they are disappointed applicants for aid the Church had not power to grant; we are told they are very respectable men. I trust the respectability of these men will not have any effect upon the deliberations of this committee. They are endeavoring to procure the repeal of the act of 1814, claimed to be a part of the charter of the Church, which has remained undisturbed from that time to this, a period of 43 years, and the property of this corporation is held by the present corporators under a title reaching far back of 1814. For, as I have contended, these corporators have been in possession of the rights they now exercise since 1798, the time of the first establishment of another church, nearly 60 years. If any property in this country is secure, this should remain undisturbed.

Hon. A. J. Parker then addressed the committee as follows:

The part that has been assigned me in the argument of this case, relates mainly to a discussion of the questions of law. I shall cover no ground that has been occupied by the gentleman who has preceded me, and shall refer but little to the facts, except where it is necessary they should be fully understood to enable you to apply the law that governs the case.

I address the Committee as a judicial body. The duty is imposed on them of deciding grave and important questions of law

and fact. I shall assume that their minds are free from the influence of all previously formed opinions. They cannot dispense justice in its purity, unless their minds be, as is required by the common law of a juror, in the expressive language of the books, "like a piece of blank paper," free from all previous impressions.

It is never enough that the mind of a court or jury be pure or honest. Much more is required, or justice cannot be attained. It must be free from all bias and prejudice. It must struggle to discover their existence and to guard against them; and it too often happens that they exist, though their possessor is unconscious of their existence.

I regard it as a great misfortune to us in this case, that some of our testimony was taken in the absence of Mr. Ramsey, and the greater part of it in the absence of Mr. Noxon. Their experience in courts, in listening to testimony and judging best of it when uttered by the witness in their presence, and their distant residence from the city of New-York, the scene where these differences exist, made their attendance more than usually desirable; especially as all the members of the Committee were present at New-York and heard all the *ex parte* evidence of the prosecution. I do not allude to this circumstance in the spirit of complaint, for I am fully aware of the great and pressing labors which these Senators are called on to perform; but I speak of it with deep regret, for no reading of our testimony by those Senators can make so deep an impression on their minds, as would the listening to the evidence as it fell from the lips of the witnesses. It is necessary to see the witnesses and to observe carefully their manner and appearance, to enable you to judge best of their intelligence and character, of the purity of their hearts and the truthfulness of their words. Two members of this Committee, experienced in courts, will readily appreciate the advantages of hearing and seeing the witnesses.

I am the more embarrassed by this circumstance, because I do not feel at liberty to detain you so long as to read over to you the evidence we have taken. I beg leave to say, however, that the witnesses we have called are men of the highest standing and character in the State; such men as Bishops Potter and Delan cy

Gen. Dix, Mr. Verplanck and others of equal standing; men whose integrity has never been questioned, and whose opinions are entitled to the highest consideration.

All the charges against Trinity Church, on the part of the prosecution, were based on hearsay and suspicion. Every one has been fully met and answered by competent evidence —overwhelmingly and conclusively answered. We ceased only to call witnesses, when members of the Committee assured us there could be no necessity for further cumulative evidence. We have called evidence to every charge and even to every insinuation made by the witnesses for the prosecution—evidence that will go out to the world and will be read—for a deep interest is now felt in this matter—it will be read carefully by every churchman and I hope by others—and by this evidence, the prosecutors, Trinity Church and even yourselves, in your conclusions upon it, shall be judged.

I concede that nearly all this evidence on both sides is entirely foreign to what I suppose is the main object of this prosecution, viz., the repeal of the act of 1814. How the property has been managed and what is its amount, can certainly have no connection with the right to vote at the annual vestry elections. As a lawyer, I could not advise that any evidence upon these questions was necessary on our part, to enable us to resist all legislative interference with our legal rights. But the evidence has been given by us for the purpose of putting at rest, I trust for all time to come, the gross misrepresentations that have been made and circulated on those subjects; to vindicate, before the whole community, the management of the affairs of Trinity Church, against the assaults of her enemies.

It was clearly not the design of the original charter that any person should be a voter at the vestry elections, unless he belonged to Trinity parish. By the original charter of 1697, it was provided that the wardens and vestrymen should be elected "by the majority of the votes of the inhabitants *of the said parish*, in communion, as aforesaid;" that is to say, as previously expressed, "in communion of our Protestant Church of England,

within our city of New-York." None but the parishioners of Trinity Church had a right to vote.

The act of 1704 did not change this. By section 6, the inhabitants were to meet annually at the said church, to choose two church wardens and twenty vestrymen, communicants of said church, " by the majority of the voice of said communicants so met, and not otherwise." By this act, also, none but communicants of Trinity Church were allowed to vote.

The third section of the act of 1784 changed materially the corporators, by allowing *pew holders* to vote, in addition to *communicants*. It was as follows :

§ III. Be it further enacted, &c., that all persons professing themselves members of the Episcopal church, who shall either hold, occupy, or enjoy a pew or seat *in the said church*, and shall regularly pay to the support *of said church*, and such others as shall *in the said church*, partake of the holy sacrament of the Lord's Supper, at least once in every year, being inhabitants of the city and county of New-York, shall be entitled to all the rights, privileges, benefits, and emoluments, which in and by the said charter and law first above mentioned, are designed to be secured to the inhabitants of the city of New-York in communion of the Church of England."

It will not be denied but a new class, viz., pew holders, was then admitted to vote. Communicants were to vote as before. It has been claimed that the words "in the said Church", mean in the Episcopal Church, in a general and denominational sense; and this breadth of construction has been attempted to be given to the section, so as to include all communicants and all pew holders in any and every Episcopal Church in the city of New-York. I deny the fairness of this construction. I claim that a careful examination of the act will conclusively show that the words "in the said Church," have an individual and local signification, and are not used in the broad sense imputed to them. The act is entitled " an act for making alterations in the charter of the corporation of *Trinity Church*," &c. In the second section power is conferred upon the wardens and vestrymen to call and

induct a Rector *to the said Church*, so often as there shall be any vacancy therein. This could of course mean no other than Trinity Church ; and in the third section above quoted, I do not see how it could be doubted that the expressions " a pew or seat in the said Church," and paying " to the support of the said Church," and " partaking of the holy sacrament in the said Church," are intended to have a local and individual application and refer to Trinity Church alone.

It could have reference to no other Episcopal Church in the city of New-York, for no other Church of that denomination was erected in that city till nine years afterwards.

The act of 1788, made no change in the charter of Trinity Church, except a slight modification of the corporate name.

It was not until 1812, when there were nine Episcopal Churches in the city of New-York, and nineteen years after the first of such additional Churches had been built, that a claim was made by two or three persons, being corporators of other Episcopal Churches, to vote at the Trinity vestry election. In consequence of that claim, of which I shall speak hereafter more particularly, the act of 1814 was passed. That act was entitled " an act to alter the name of the corporation of Trinity Church in New-York, and for other purposes," and the second section was as follows :

" And be it further enacted, that all male persons of full age, who for the space of one year preceding any election shall have been members of the congregation of Trinity Church aforesaid, or of any of the chapels belonging to the same, and forming part of the same religious corporation, and who shall hold, occupy, or engage a pew or seat in Trinity Church, or in any of the said chapels, or have partaken of the holy communion therein, within the said year, and no other persons, shall be entitled to vote at the annual elections for the churchwardens and vestrymen of the said corporation."

It is this section, so clear and explicit in its provisions, that the movers of this investigation seek to repeal, under the erroneous supposition that if it were repealed, members of the

Episcopal Churches in the city of New-York, not being either pewholders or communicants of Trinity Church or its chapels, would have the right to vote at the annual vestry elections of Trinity Church. The object of this movement is, by controling the elections of wardens and vestrymen of Trinity Church, to select those who will appropriate the property of Trinity to the benefit of other Episcopal Churches in the city of New-York.

It is only thus incidentally, and as a consequence of enlarging the number of corporators who may vote at the vestry elections, that any question of property is involved in the controversy. It is a question of the right to elect those who control property, and not a question of ownership itself. Some have been misled by the erroneous impression, that the property of Trinity Church is held in trust for the benefit of others. There is no foundation whatever for such an opinion. A careful examination of the charter and grants will show that the property was given to the corporation alone as its own absolute property. It is only subject to that great trust, that high religious obligation, by which all possessors of wealth, yourself, Mr. Chairman, and all others, are responsible to the Most High for a proper application and use of the gifts of Providence. In that sense it is a trust estate and in no other.

The impression I have referred to may have been derived in part from the original name given to the corporation. By the charter of 1697, the corporation of Trinity Church was declared a body corporate, by the name of "The Rector and Inhabitants of our said city of New-York, in communion of our Protestant Church of England," and this name underwent but little change until the act of 1814. Now it seems to be supposed that because the inhabitants of the city of New-York are mentioned in the name of the corporation, they are all to be deemed incorporated and included. But every lawyer must know that powers can neither be enlarged nor restricted by the mere name given to a corporation. Indeed it is not at all material, as a matter of law, that a name should indicate either the object of a corporation or the number and character of its corporators, though it is certainly advisable as a matter of taste, that the name should be appropri-

ately chosen. The Legislature may incorporate a company called the "The Merchants of Albany," but such a name would not make all the merchants of Albany corporators, any more than the name of "Mechanics and Farmers' bank," would legally indicate that it belonged to mechanics and farmers alone, and exclude all others from an ownership in its stock. We have near by a bank called the "National Bank," but it is simply a State institution.

A grant made to "The Rector and Inhabitants of the city of New-York in communion of our Protestant church, &c.," is simply a grant to the corporation. It conveys no interest to the individual inhabitants of the city. The grant of Queen Anne, made in 1705, after reciting the incorporation by the name I have quoted, proceeds to give, grant, ratify and confirm unto the said "Rector and inhabitants, &c.," certain property, to have and to hold to the said Rector and inhabitants, &c., and their *successors forever.* Thus using words of perpetuity applicable to a corporation alone. The property is thus given to the corporation as such in its own right, in perpetuity, and no individual right vests under the grant, in any inhabitant of the city of New-York. No lawyer can fail to understand that "successors" is a word of perpetuity, applicable only to a corporation, not to individuals.

The selection of the corporate name of Trinity Church was made in accordance with a custom prevailing at that early day. St. Peter's Church, in this city, was chartered in 1769, by the corporate name of "The Rector and Inhabitants of the city of Albany, in the county of Albany, in communion of the Church of England, &c. That name was changed in 1789 to "the Rector and Inhabitants of the city of Albany in communion with the Protestant Episcopal Church, in the State of New-York," and it still bears that name, though there are four other Episcopal Churches in the same city A grant now made to "the rector and inhabitants of the city of Albany," &c., would be simply a grant to the corporation of St. Peter's Church. Bishop Potter tells us in his evidence, that when St. Paul's Church was set

off and organized in this city, no one thought of its making a claim on St. Peter's for a portion of its corporate property.

Mr. Verplanck also informs us that the Episcopal Church at Fishkill was chartered under a like corporate name; and by reference to 3 R. S., 1st ed., 544, it will be seen that the Episcopal Church at Poughkeepsie was called " the rector and inhabitants of Poughkeepsie in communion," &c. Grace Church, in the town of Jamaica, Queens county, was called " the rector and inhabitants of the town of Jamaica, in communion," &c.; and similar corporate names were given to other churches.

At the time Trinity Church was chartered, and for many years afterwards, it was undoubtedly supposed that this church would be sufficient for the accommodation of all the inhabitants of the city of New-York, who were in communion with the Episcopal Church. The original charter, and the subsequent legislative acts, were evidently framed upon the idea that provision was to be made for but a single parish. With that view the church building and churchyard, in the charter of 1697, are declared to be " the parish church and churchyard of the parish of Trinity Church," and were dedicated " to the service of God for that use and purpose, and no other." And it was also declared that " the rector shall have the care of the souls of the inhabitants within the said parish, in communion," &c. The power of " regulating the affairs of the said corporation and parish of Trinity Church" was given to the vestry, and the church wardens were expressly prohibited from disposing of any of the pews to any person not an inhabitant. Indeed, the charter went so far as to declare that the church and churchyard should be " the sole and only parish church and churchyard in the city of New-York."

Even at that time, when there was no other Episcopal Church in the city of New-York, it did not follow that a member of the Episcopal Church, happening to come to the city of New-York to reside, had a right to vote at the vestry elections until he became a member of the parish; for, by the charter, full power was given to the church officers " to choose, nominate and appoint, so many others of our liege people as they should think fit, and shall be willing to accept the same, to be members of the

said church and corporation." This power to admit, which implies the power to reject, if the applicant be not qualified or be unworthy, is of course only applicable to inhabitants of the city of New-York, for all others are expressly excluded by the charter. It shows a discretion in admitting parishoners, vested in the officers of the church, to be exercised within the prescribed limits—a discretion necessary to preserve the discipline and order of the church. In other words, it shows that the relation of rector and parishioner was first to be established in the usual mode to constitue a person a corporator. In this respect it was placed upon the same footing of all other churches. It seems to me plain that the charter excludes all as corporators who are not parishioners of Trinity Church.

The word "parish" by no means includes all who reside within a given district. The meaning, when used as in this act, is declared by the court in 16 Mass. Rep. 488, to be, "a competent number of persons, dwelling near together and having one bishop, pastor, &c., set over them."

It is an established rule of the English Church, that a person can be a parishioner in but one parish. By the 28th canon of that Church, unless he be a wayfarer or traveler, he is not entitled to partake of the communion except in the parish to which he belongs, though it is in the discretion of the pastor of another parish to admit him. This same rule governs every Episcopal Church in this country, as will be seen by reference to the 13th Canon of the American Church ; and it must be conceded that such a rule is indispensable to Church discipline, and must be maintained inviolate. Surely the English Government will not be supposed to have been willing to violate, by any charter, so well settled and salutary a principle of its own established Church ; and no strained construction should be put on a charter, to give it a meaning so repugnant to the probable intent of the government granting it.

So too in this country, where every form of religion is fully and equally protected, the government will not be supposed to have intended to make an exception to its beneficent rules of toleration, in singling out this particular Church as an object of

unjust discrimination, and despotically to say, it shall not be governed according to the established forms and usages of its faith, by a vestry chosen by its own pewholders and communicants, but may be governed by a vestry chosen by the votes of those who do not worship within its walls, or kneel at its altar ; by those who are members of other religious corporations, and aliens to this. Will the law deprive the parishioners of Trinity Church of the rights enjoyed by every other Church in the State of every denomination, that of choosing its own officers? *It would be a deprivation of the right of self government.* A vestry chosen by the votes of those who are members of other religious corporations would select a rector for the congregation, who would not be the choice of the parishioners, and would manage all the affairs of the corporation with reference rather to the interests of the Churches to which the voters belonged, than to those of Trinity Church. It would be an unheard of despotism, thus to permit one set of men to govern another—to control its spiritual as well as temporal affairs. It would be utterly at war with all our ideas of civil and religious liberty.

The principle that makes a person a member of but one parish, and responsible to but one religious society, pervades the whole christian world, and is indispensable to the maintaining of discipline, and preservation of purity. If, when the pastor withholds the sacred elements from one of his flock because of his unworthiness, he can go to another parish, aud there enjoy the right to receive the holy sacrament, the Church would fail utterly in its influence and in its power to do good.

I understand that it is the practice in all well regulated churches of different denominations, when a person removes from the parish of which he is a member, to take with him a letter dimissory, accrediting him to the pastor in charge of the parish to which he removes, certifying to his good standing in the Church, on which he is formally transferred from one society to the other, and admitted as a member of the latter.

So universal is the sentiment in favor of the necessity for this discipline, that all our general laws for the forming and regulat-

ing of religious societies are framed upon it. The general act of April 6th 1784, as to all religious denominations, authorizes the male persons of full age belonging to any Church, congregation or religious society *not already established*, to assemble and meet together, and by a plurality of voices, elect trustees and organize as a corporate society. (1 Jones and Varick 104). So too the act of 1801, re-enacted in 1813, called "an act to provide for the incorporation of religious societies," provides in the first section for the incorporation of societies of the Protestant Episcopal Church, but extends its benefits only to those *not already incorporated*. (1 Kent and Radcliff, 336.) By thus allowing a person to be a corporator in but one Church, the statute protects fully the Episcopal and other churches in their long established and indispensable usages.

There is certainly nothing in the charter of 1697, or in the subsequent statutes, that sanctions in the least degree, the idea that persons in communion with the Protestant Episcopal Church, who were parishioners of other parishes, could vote at the vestry elections of Trinity Church. Even if it were the fair interpretation of the act of 1784, that Episcopalians generally who were inhabitants of the city of New-York, had a right to vote, which I deny, yet it is certain that even then, on well settled principles of law, that right would cease on uniting with another congregation. The moment a member of Trinity Parish became a corporator in another Church, he ceased to be a corporator of Trinity Church. (The inhabitants of the Parish of Sutton *v.* Cole, 8 Mass. R. 96. The Methodist Episcopal Church of Cincinnati, *v.* Wood, 8 Hammond, R. 283.)

No one has ever yet voted at the vestry elections of Trinity Church who was not a member of Trinity parish ; and the fact that no one out of the parish so voted or claimed the right to vote from 1784 to 1812, a period of 28 years, shows a cotemporaneous practical construction of the act of 1784, which, in a case of doubt, should be conclusive.

The fact that no person has ever voted at the vestry elections of Trinity Church, except a pew holder or a communicant of that Church, has never been controverted. It was not denied in 1814,

nor in 1846 or 1847, when applications were made to the Legislature to repeal the act of 1814. But we have, nevertheless, not neglected to prove it. I know it is difficult to give proof in regard to transactions which occurred sixty or seventy years ago, but fortunately we were able to produce before the committee two aged men of the highest respectability, whose truth and integrity will never be questioned, who were connected with this Church, and active and zealous in its interests prior to 1812. I allude to the venerable rector of the parish, Doct. Berrian, and the Hon. Gulian C. Verplanck. The latter witness was examined fully on this subject in the absence of a member of the committee, Mr. Noxon. The rector tells us that he never heard of any claim of this kind being made until 1812. Mr. Verplanck was asked if any persons other than pew holders and communicants in Trinity Church, ever voted there? He answered, "never as I believe;" he said that he himself was a corporator there in 1811, that in 1812 there was a great struggle in the parish, arising out of some question between Doct. Hobart, (afterwards Bishop Hobart,) and Mr. Jones; that the excitement was so great that it brought out two or three hundred voters at the vestry election of that year, and that he, Mr. Verplanck, voted at that election. He informs us, that on that occasion, for the first time, two other persons belonging to other Episcopal Churches—corporators of other Churches—came forward and offered their votes and their votes were rejected. It was the great excitement then prevailing that led to this act. At that time there were nine other Episcopal Churches in New-York, the first established in 1793, and the others subsequent to that period; yet no one ever heard of such a claim having been made prior to 1812. It was regarded as an extraordinary circumstance and attracted the attention of the corporators and vestry of Trinity Church, and led to subsequent action of which I shall presently speak.

The following resolution was adopted by the vestry, on the 28th day of March, 1812. It seems to have been passed, as a precautionary measure, on learning that votes of members of other churches were to be offered:

"It having been represented to this Board that certain persons belonging to Protestant Episcopal congregations in this city, which have been incorporated as separate and distinct from the corporation of Trinity Church, and who are not pew-holders in Trinity Church or any of its chapels, claim a right to vote at

the annual elections for churchwardens and vestrymen of Trinity Church, therefore resolved, as the unanimous sense of this Board, that no other persons, except inhabitants of the city of New-York, who profess themselves members of the Protestant Episcopal church, and hold, occupy or enjoy, a pew or seat in Trinity Church or one of its chapels, and regularly pay to the support of the said Church, or regularly worshipping therein, shall partake of the holy sacrament of the Lord's supper in the said Church or one of its chapels at least once in every year, are entitled to vote at the said elections."

It was in consequence of this offer to vote, and very soon afterwards, and for the purpose of putting at rest the doubts on that subject, that Trinity Church applied for and obtained the passage of the act of 1814. It should not be forgotten that Dr. Berrian and Mr. Verplanck, in relating this circumstance of the votes being offered and rejected in 1812, add further, that they learn from documentary evidence, from history and tradition, that no such claim was ever before made.

The petition of Trinity Church, on which the act of 1814 was passed, contains very strong evidence on this subject. After reciting the original charter and the acts subsequently passed, it proceeded as follows:

"That since the passing of the act above referred to, (the act of 1784,) the pewholders of Trinity Church and of the churches or chapels belonging to the said corporation and the regular communicants therein, have been the only persons admitted to vote at elections for churchwardens and vestrymen of the said corporation, according to the just and fair construction contemporaneously and ever since given to the said act."

After proceeding to state further, in the petition, the unexampled increase of the city and the organization therein of other religious corporations of the Episcopal church, and that none of said corporations claimed any right to vote in the elections of Trinity Church, the petition proceeded as follows:

"Nevertheless, a few individuals belonging to such separate corporations, have recently pretended to claim that right, and

at the last annual election of church wardens and vestrymen of Trinity Church, held in the month of March, 1812, two or three persons, being members of incorporated churches, separate and distinct from your petitioners, tendered themselves as voters; but their votes, under an ordinance previously passed by your petitioners, were rejected and no measures have been yet taken to enforce or establish the right so claimed."

The allegations thus clearly made in the petitions were never denied, and ought, at this late day, to be regarded as very strong corroborative evidence of the facts alleged.

On the whole evidence, not a doubt can remain in regard to the fact, that no one ever voted at the vestry elections of Trinity Church, except the parishioners of that church; and the great length of time which elapsed after new churches were incorporated previous to 1812, ought to be regarded as very conclusive evidence that the members of the churches gave to the act of 1784, the same construction which we claim for it. That construction, thus practically agreed upon by all parties, ought not now to be questioned.

One of the witnesses was asked by a member of the committee, if the poll lists had been preserved; and, on that suggestion, we sent for the clerk of the vestry, and examined him as a witness. He states that he has made a full examination of the papers of the office, and that no poll list can be found of a date prior to 1846. Since that time, poll lists have been kept. But gentlemen, poll lists and lists of corporators are very different things. Poll lists are lists of persons actually voting at an election. Lists of corporators are lists of those entitled to vote. The latter have always been kept. They are part of the records of the vestry, they embrace not only the names of communicants received from time to time, but the lists of pew holders also. It seems it had never been the practice to keep lists of voters at the vestry meetings prior to 1846. It was enough that the presiding officer had before him the lists of corporators, that he might ascertain the right of a person to vote, if any such question should arise.

And here, I hope it may not be thought out of place, Mr. Chairman, to call the attention of the committee to the following expression in your report on the *ex parte* evidence, occurring on page 4 of the legislative document. You there say, "it must therefore be an oversight, that among the names contained in these lists," believed to be accurate, "there are those of persons who have removed from the city, and also of others who have *long been dead—some of them for years!*" This is based on the testimony of Mr. Wolfe, as it appears on pages 113 and 114 of the same document; but that evidence will by no means justify either the expression or the insinuation of the report. Mr. Wolfe said, "on the list of corporators who are communicants and not pew-holders, I do not know that any of them have deceased; on the list of corporators as pew-holders, there are *some* names of deceased persons, and of persons residing out of the city." He does not say, as you state in the report, that they have "long been dead—some of them for years!" He said nothing that could imply a censure. His evidence was not inconsistent with the idea that their death or removal occurred immediately before his examination as a witness. Again, the report conveys the idea that the remark was applicable to all the lists, whereas the witness expressly stated, that in the list of communicants, he did not know of any of them having deceased.

But I think a little reflection will satisfy the committee of the great injustice of imputing blame to the officers of Trinity Church, because some names were found in her lists of pew-holders, of persons who were dead or had removed from the city. Suppose a pew-holder to die; does not his family continue to occupy the pew—his widow, perhaps, and his children? Pray, in whose name should the pew be registered, before the son grows up to take the place of the father? The widow cannot, by law, be a corporator. And what injury could be done to any person, if the pew continued for a short time to stand in the name of the late owner, even pending the settlement of the estate? Surely, there can be no danger of an unlawful vote being received from the person whose name remains thus on the list of pew-holders?

It may happen, also, that a parishioner may pass part of his time in the country, occasionally coming to the city and occupy-

ing his pew ; and are the officers of the Church blameable, in such case, for keeping his name on the list of corporators, when it may well be doubted whether he reside in the city or not? With regard to the list of communicants, there can be no difficulty in making it strictly accurate, and Dr. Haight testifies that he makes the returns to the rector annually ; but with regard to the list of pew-holders there may well be much difficulty. But I will spend no more time on this topic. It seems to me the charge made is utterly unworthy of having been formally placed upon the files of the Senate.

The act of 1814 was passed for the purpose of defining and explaining more clearly who were the corporators of Trinity Church and of putting at rest the doubts which had arisen in consequence of the claim made by two or three members of other churches to vote at the election of 1812. This is apparent from the preamble of the act, which recites that Trinity Church asked that further legislative provisions may be made, "for the purpose of removing *all doubts* respecting their Charter rights, occasioned by the formation of other religious societies in the said city of New-York." It is clear that the Legislature did not suppose it was taking away the right of any corporator. At that time, the office of Attorney General of this State was filled by that eminent jurist and good man, Abraham Van Vechten, and the matter was referred to him by the Assembly for his opinion. He reported as follows: "That he has examined a printed copy of the charter granted in the year 1697 to the rector and inhabitants of the city of New-York, as then established by law, and the acts altering the said charter, together with the bill refered to in the resolution entitled, "an act to alter the name of the corporation of Trinity Church in the city of New-York, and for other purposes," and he is of opinion that the purpose of the said bill will not defeat or vary any existing vested rights under the said charter and acts."

This, gentlemen, was high authority. It was that of the constitutional officer of the government, whose duty it was to give opinions in such cases. This opinion was given with all the acts before him ; at a time when he had certainly a much better op-

portunity of judging than we have now, at least with reference to the co-temporaneous construction practically given to those acts by the parties interested. This opinion was formed and expressed with all the advantages which a period of time forty-three years earlier afforded, and was concurred in by the Legislature.

Gentlemen—The Legislature of 1813 that passed that act, was one of the ablest that ever assembled within this capitol. Among its members were Daniel Cady, Elisha Williams, J. Rutsen Van Rensselaer, Josiah Ogden Hoffman, Nathan Sanford, Morgan Lewis, Erastus Root and Martin Van Buren, the most able and distinguished men of the day—men not likely to fall into the error of invading, by their legislation, the vested rights of any citizen; and there were several others in that Legislature whom I ought, perhaps, to have named in the same list. Six of these distinguished men, whose portraits now grace these walls, and who are looking down this day upon our doings, were concerned in the passage of the act of 1814, either as members of the Legislature or of the Council of Revision. The bill did not pass the Legislature in silence; it was discussed and examined. When it came before the Council of Revision, objections in writing were made by Chancellor Lansing, which, on further examination, were abandoned and finally voted against by their author. Those were honest days, Mr. Chairman, when a public officer, who had been misled by an erroneous impression, might well be expected to acknowledge his error and correct it. I hope, sir, all that honesty has not yet, in the expressive language of the Rev. Jesse Pound, "died out." For this honest and frank correction of an opinion by Chancellor Lansing, his memory has been recently defamed by an editor of a newspaper in the city of New-York, who has disgraced himself before the public, by imputing to the venerable Chancellor that this change of opinion was obtained by corrupt means. Shame upon such licentiousness of the press; shame upon the man who will thus assail the memory of the honored dead—and the greater be the shame if the slanderer be the editor of a newspaper called "religious." A cause must be desperate that requires a resort to such disreputable means.

We suppose then that the act of 1814 changed no chartered rights. But if it did, the change was made *with the consent of the*

corporation and on its application. The Vestry, in its corporate capacity, is the authorized and legal representative of all the corporators. The Vestry have full power to manage and control the affairs of the corporation. It was chosen for that purpose. The corporator as an individual has no power of management. He has surrendered all power to the Vestry and given into its keeping his legal rights. The will of that Vestry, expressed under its corporate seal, is conclusive of the will of all whom the Vestry represents. How else can the Legislature deal with the corporators, except through the corporation acting under its corporate seal? As well might a stockholder in a monied corporation question the vote given on his own authorized proxy, as a corporator deny the validity of the act of the Vestry which he has chosen to represent him. All contracts must be made with the corporation, as such, not with the individual members of it. In the dealings of a corporation, corporators are not known individually. They are merged in the body corporate. The very principle of their organization is that the majority control and regulate its affairs, and the officers chosen are its agents.

In the Bank of Augusta vs. Earle, 13 Peters, 587, Ch. J. Taney says, "whenever a corporation makes a contract, it is the contract of the legal entity—of the artificial being created by its charter; and not the contract of the individual members." In the Lincoln and Ken. Bank vs. Richardson, 1 Greenleaf Rep., 79, it was held in Maine, that the stockholders of a bank are bound by every act which amounts to an acceptance of the terms of the charter on the part of the directors. See also Willcock on Corporations, 202.

The assent of a corporation may be shewn by the acts of its officers or by long acquiescence. (Ang. and Ames on Corp. 4 ed., §83; U. S. vs. Dandridge, 12 Wheaton R., 70, 71.) Now, in this case, there is no question of the assent of the corporation. The act of 1814 was petitioned for under the corporate seal of the Church. There was the consent of the Legislature and the consent of the corporate body, making a complete contract between them. Having established this proposition, I pass to another point.

A charter is a *contract* between the Legislature and the corporation, made by the assent of both parties ; and when such charter is granted and accepted, the Legislature has no power to interfere with the vested rights of the corporation, because such interference would be a violation of the Constitution of the United States, art. 1, s. 10, which declares that no State shall make a law impairing the obligation of contracts.

This rule was settled in the case of Dartmouth College v. Woodward, 4 Wheaton R., 518, to which all subsequent decisions have conformed. The law has never since been questioned. The case I have last cited was that of a charter from the British Crown to the trustees of Dartmouth College, in New Hampshire, in 1769, and it was held to be a contract within the meaning of that clause of the Constitution to which I have referred, and that it could not be altered by the Legislature without its consent. It was held also that it was not dissolved by the revolution. The charter of Trinity Church stands on precisely the same footing. It was granted by the British Government, was not dissolved by the revolution, but was in fact recognized and confirmed by this State, (Const. of 1777, § 36), and it is not in the power of this Legislature to alter it, in any material respect, except by the consent of the corporation.

If then, a material amendment of a charter can only be made by the consent of the corporation, when such amendment is made as was done in this case by the act of 1814, by the consent of both the Legislature and the corporation, it is a new or modified contract, and cannot be changed back without the consent of the corporation, (1 Kent's Com. 416, 458; 3 Burr, 1656; Rex v. Passmore, 3 Term R. 240; 4 Wheaton, 707). "Nothing seems better settled, (says Mr. Justice Story,) at the common law, than the doctrine that the crown cannot force on a private corporation a new charter, or compel the members to give up their own franchises, *or admit new members* into the corporation."

The only exception to these propositions is when a right to "repeal, alter or modify" is reserved in the act of incorporation; and such a clause has been inserted in all special charters in this State since the decision on the Dartmouth College case, in 1819. (See 2 Kent Com., 7 ed., note b.)

The rule of law I have been discussing, as settled by the Dartmouth College case, is applicable to *private* not to *public* or municipal corporations, (4 Wheaton 518). It will not be denied but that Trinity Church is a private corporation. "Every corporation is private, as distinguished from public, unless the whole interest belongs to the government, or it is vested with political or municipal power." This is the definition given in Rundle vs. Del. and R. canal,1 Wallace C.C. R.,275; see also 2 Kent, 305, 7th ed., note 1. I concede, that in regard to public or municipal corporations, such as cities, towns and villages, the Legislature has full power to repeal or amend, without having made any reservation of power in the charter, and without the consent of the corporation; but that power does not extend to private corporations, such as colleges, churches, academies, &c.; all these come within the law as adjudged in the Dartmouth College case.

We claim then, that the act of 1814 was a contract between the Legislature and the corporation of Trinity Church, putting at rest a disputed question, and passed on the application of Trinity corporation; and that there is no power in this Legislature to repeal it or to change any material part of it.

Forty-three years have elapsed since the passing of the act of 1814. For thirty-two years there was an entire acquiescence on the part of all the members of the Episcopal churches in the city of New-York. This is clearly proved by the testimony of Mr. Verplanck and Doct. Berrian, who speak from actual knowledge, having been present at the vestry elections. During all that long period of time, no such persons offered to vote at the vestry elections of Trinity Church. In 1846, after some such person had applied to vote at such an election, and been refused, certain persons, members of other Episcopal churches, applied to the Legislature to repeal the act of 1814, and the application was reported against by a committee of the Senate, and refused. Nothing daunted by that, they renewed their application in 1847, and it was unanimously reported against by a very intelligent committee of the Assembly, consisting of seven members, and the report was unanimously concurred in by the Assembly. A very able and conclusive report was then made against the petition. And then it slept ten years longer, until this movement was initiated, not openly, as before, by memorial, and ap-

prising the whole world of their object, but secretly, slily getting some one to throw in a resolution just at the close of the session, to take testimony in secret—hearsay evidence—evidence based on mere suspicion—much of it given by witnesses who have no personal knowledge of the facts; vague and very erroneous opinions of the law, sworn to by witnesses and made evidence; and a copy of the testimony refused to be given to the officers of Trinity, till it should first have been reported to the Senate and made public to the whole world. It is in such a proceeding, originated and carried on in this manner, that the attempt is again made, despairing of success by other means, to repeal the second section of the act of 1814. If refused here, as I trust it will be, in common honesty, then ten years more may perhaps elapse before some new scheme shall be devised by these few persevering clergymen and laymen to accomplish their purpose. All these applications have been made by the same persons, and the testimony of Mr. John R. Livingston fully identifies them as the same persons, also, who were the principal witnesses before this committee at its secret sessions in New-York.

The lapse of forty-three years is conclusive against any supposed individual claim of a corporator. It is a lapse of time twice that which is required to bar a claim to real property; seven times that which would bar an action on contract; four times as long as would bar any equity action, and longer than is required even against a claim to real property by the State. Now, after a lapse of near half a century, contrary to all sound principles, an attempt is made to open and renew a controversy long since disposed of, and apparently abandoned.

If the courts, even in mere temporal matters, regard the statutes of limitation as statutes of repose—as salutary means of terminating strife and contention, how much more reason is there for the presumption afforded by lapse of time, when their just application will secure peace to a large and respectable body of the christian church—will save funds consecrated to pious uses from being spent in litigation and strife, and will calm the troubled waters of church controversy.

It was held in the " Winchelsea cases," (4 Burr. 1962,) that twenty years unimpeached possession of a corporate franchise should be regarded as conclusive evidence of right. Twenty years was thus adopted as the legal limitation, beyond which, even as to a private corporation, the right should be regarded as established. This rule of the common law, thus declared by Lord Mansfield, has not, I believe, been questioned. If, in the case of a private corporation, the right will be regarded as settled after a lapse of twenty years, can it be supposed that an individual corporator will be permitted to allege a right disposed of and acquiesced in forty-three years before?

In this respect the act of 1784, under which the right to vote is claimed, and the act of 1814, stand on the same footing. Both were amendments of a charter passed by the Legislature,—the former with the implied and the latter with the express assent of the corporation. Now, if individual corporators are at liberty to go back to the act of 1814, on the ground that that act cut off their rights, may not the individual communicants of Trinity parish go back with the same right to 1784 and complain that that act infringed upon their rights as corporators, by admitting as voters a new and much more numerous class, viz: the pew-holders; who before that and under the original charter had no such right?

If an individual may go back forty-three years to assert such a right, it cannot change the question if twenty-eight more years be added. The true answer in both cases undoubtedly is, that in neither case can the individual corporator have any right. The consent given by the corporation—by the officers who represent him—being conclusive against his claim.

But if any persons were deprived of a right by the act of 1814, which we deny, who were they? Certainly they were only the persons then in existence, and then members of other Episcopal Churches in New-York, and only that portion of those who did not assent to the action of the Legislature. Their number must have been very small at that time; the churches generally approved of the application, and some of them joined in it. No such persons have ever appeared here and asked to regain a lost

right. I doubt if any of them are in existence. A person who was of age in 1812 must be an old man now; and in the changes by removal and otherwise, constantly taking place in the city of New-York, the chances of one such person still remaining there are very small.

The movers of this prosecution are new men, they belong to a later class; some of them have been residents of the city of New-York but a short time; they are men also who never could have had any interest prior to the act of 1814; and there is no pretence, certainly no proof, that they were affected by its provisions. It is plain, I think, that no one has a right to complain, unless it is a party himself aggrieved; and I think it is equally plain that as to all others, all having no rights when an act was passed, the act can never be questioned.

Two or three of the clergymen who are agitating this matter most pertinaciously—who were witnesses before the committee at its ex parte and secret session in the city of New-York—most of whom are proved to have been heretofore applicants to the Legislature on this subject, and who I am told, were most zealously conspicuous at the meeting held in the city of New-York a few evenings ago, are now in charge of churches which have been endowed most liberally from the means of Trinity Church; churches which released long ago all further claims upon its bounty, and one of which at least, and I think more, co-operated with Trinity church in the application upon which the act of 1814 was passed.* I have before me a letter addressed, on the 12th April, 1812, by the rector, wardens and vestry of St. Mark's church, to the vestry of Trinity church, from which I make the following extract: "We have learned with regret that some of our Episcopal brethren, assert the claim of a general right in all the Episcopal churches in this island to vote at your elections for church wardens and vestrymen. Whatever color may be given to this claim by any ambiguous words to be found in your charter, we sincerely take pleasure in declaring, that the congregation of St. Mark's, which we represent, have no desire to assert the claim, and that we will at any time hereafter cheerfully

* St. George, St. Mark and Grace Church have all shared liberally in the bounty of Trinity Church.

unite with your respectable body in an application to the Legislature, if the measure shall be thought expedient, to explain the charter and confine the right of voting to the congregations of the churches under your immediate government." Justly may we exclaim, "Heu pietas—heu prisca fides!"

I have shown that to authorize members of the Episcopal Church corporations, not members of the congregation of Trinity Church or its chapels to vote for the officers of Trinity Church, would be subversive of the letter and spirit of the act "regulating Religious societies," and would render members of other distinct corporations members of two distinct religious corporations at the same time, would deprive the congregation of Trinity Church of the power of choosing their own rector and officers, and of managing their own internal affairs, and would subject them to the government of an overpowering multitude, strangers to the congregation and interests of Trinity Church. Why, gentlemen of the committee, if it were practicable to change this law and do this great wrong, to break in upon the established usages of the Church and say all may come in and vote here, the multitude that would assemble, numbered by thousands, would rush to the Easter elections of Trinity Church, each in the eager hope of securing the choice of a vestry, who would give the larger portion to the particular Church to which he belonged—fifty different and conflicting interests, representing that number of Churches, would struggle for the mastery. It would be strange indeed if disgraceful scenes of discord and strife, and perhaps of violence, were not the fruits of such an organization. Such would, I think, be the inevitable and melancholy results of the mistaken efforts of those who ought to have been engaged in preaching "peace on earth and good will to man" instead of calling out and encouraging the worst passions of our nature.

I trust, neither this committee nor the honorable body which it represents, will lend its sanction to a scheme so mischevious. But it will fall far short of its duty and subject itself to just criticism hereafter, if it fails to meet this question firmly, if it neglects to rebuke, in a conservative spirit, and in strong terms, the agitators who, mistaking their duty, have urged on this nefarious scheme of wrong and plunder.

Do not understand me, gentlemen, as speaking disrespectfully of these men as individuals; many of them are gentlemen of the highest respectability, and of great moral worth, and I doubt not they are "all, all honorable men." I believe if they could look at this question with its train of consequences, from a different and more disinterested point of view, they would be quite surprised at the new aspect it would assume.

Mr. Chairman, I have been aware of some of the extraordinary measures which have been resorted to for the purpose of prejudicing the public mind in advance, on the questions involved in this investigation, but I had not been informed of the slanders which had been circulated out of doors for the same purpose, till I learned it during the examination. Mr. Verplanck was asked by a member of this committee, on request, (but by whom the request was made we were not informed,) whether Trinity Church has recently had any persons employed as counsel or otherwise, now belonging or attached to the judicial, executive, or legislative department of the State government He answered promptly and unqualifiedly, that no such person had been employed, and that from his position on committees of a legal and executive character, he must have known it if any such person had been employed, now or for some years past. Sir, I was greatly obliged to the committee for putting such a question, and enabling us to put down conclusively and forever the slanders referred to. Such dishonorable means, when exposed, cannot fail to recoil upon those who employ them. I will not, sir, retaliate. But we are not to forget that those who are urging on this prosecution, are generally men of large wealth and great influence. They have the means of exerting undue influence even more ample than Trinity corporation itself. They have already succeeded in enlisting in their interests men of prominent political rank, newspapers of influence, and men whom I meet in almost every part of the capitol, watching the progress and caring for the result of this investigation. One of these prosecutors is at the head of a large business corporation, scattering its loans *on mortgage* in every part of the State. While we challenge for ourselves and all our acts the severest scrutiny,

we shall, if occasion calls for it, demand that others be subjected to the same test. Trinity Church will resort to none except the ordinary and legitimate means of defence, but she will rely implicitly upon her own integrity, upon the laws of the country, and the conservative spirit in which they should be administered, to protect her from being wronged.

The third section of the act of 1814, which authorizes Trinity Church to make grants of land to other religious corporations, has been made the subject of criticism. Under our general statute for the incorporation of religious societies, no religious corporation could sell in fee any real estate without an order of the Chancellor (2 Kent's Com., 7th ed.) The enactment of the section in question was certainly a great convenience, even if it was not indispensably necessary, under an ancient rule of the common law.

The sixth section of the act of 1814 provides that when a church shall have exhibited the account and inventory as specified in the ninth section of the act entitled "An act to provide for the Incorporation of Religious Societies," it shall not be necessary for such church again to exhibit an account and inventory, unless such church shall have acquired lands within this State subsequent to the exhibition of such account or inventory.

Trinity Church had exhibited such account and inventory, and has since doing so, acquired no additional lands in this State. It is clear, therefore, that the Senate had no right to call for the returns which have led to this investigation. The Senate certainly could not, by resolution, overrule a valid and binding act of the Legislature, and Trinity Church had a perfect right to decline to answer and could not justly be censured for doing so. But she has not declined to answer; entertaining a profound respect for the Senate and an abiding confidence in its justice, Trinity Church has answered fully.

The attempt which has been made to criticise her report, as not having complied technically with every requirement of the resolutions of the Senate, is equally unworthy and unavailing.

Trinity Church was not called upon to state her opinion of the value of each lot; but she was asked what was "the estimated value of each lot," and she answered fully and fairly. The value of the lots had then been recently estimated by the sworn assessors of the city, and nothing could be fairer than to return that estimate, stating expressly, as she did, by whom it was made. The value was a matter about which persons might well differ in opinion; it was a matter about which two of the gentlemen employed by the prosecutors here to appraise the lots, did, in fact, differ among themselves over $670,000. Mr. Verplanck's testimony shows that no other return of the "estimated value" could have been made than that which was made. If the vestry had attempted to appraise it themselves, perhaps no two of the twenty-two members would have agreed in opinion. It is undoubtedly true, that a large portion of these lots are constantly rising in value, and are now more valuable than when appaised by the assessors. But all this is liable to change, and Mr. Verplanck informs us that in some parts of the city of New York, and particularly about and near Hanover square, real property has depreciated nearly one half within a few years. The same vicissitudes may occur to the property of Trinity Church, when the tide of business, always fluctuating, shall move in the direction of some other part of the city.

While on this subject, Mr. Chairman, let me call your attention to the error of calculation in your *ex parte* report, testified to by Mr. Skidmore, by which you erroneously add more than $1,400,000 to the value of the property of Trinity Church. While you have increased largely the estimate of valuation of the whole property, you have deducted for the leases upon the former valuation. It should not be forgotten, that the present value of eleven and a quarter years' interest in real estate, at 6 per cent., is equal to about two-thirds of the whole value of the property.

But, I ask, what has all this evidence to do with the question of the repeal of the act of 1814? Can that question be at all affected by the wisdom of the policy of Trinity Church, or the amount of her grants, or the objects to which grants have been made? May not Trinity Church do what she will with her own?

Certainly, neither the State nor an individual has the power to question that right, or to despoil her of a dollar of her property, because the policy which has governed her may be deemed to have been unwise.

But Trinity shrinks from no investigation. She has gone into it fully and openly—not in secret. Her defence does not rest upon hearsay, like the charges, but upon positive proof. She calls the members of her vestry ; those who must know best ; who alone could know the representations made by each applicant for her bounty, and disproves, by the most conclusive evidence, every insinuation of partiality and partisanship. It is proved beyond controversy, that no grant was ever made or denied with reference to the "high Church" or "low Church" predilections of the applicants. Trinity Church has shown the extent of her bounties, and the too liberal devotion of her means to purposes of religion, education, and charity. While Trinity Church has aided all but two of the fifty Churches in the city of New-York, there are more than two hundred Churches scattered over this great State that have been relieved and fostered by her. She is indeed the *alma mater* of them all. Though the property belongs to Trinity alone, and she is a trustee in no legal sense, she has been able, under Providence, to accomplish more good than has ever been done by any other private corporation on this side the Atlantic, and probably in the world ; and if not despoiled of her means by the cupidity which corporate wealth is apt to incite, she will go on in her high mission with increased ability and usefulness.

With a present income of less than $100,000 per annum, Trinity Church expends the whole and more in doing good—not in extravagant salaries to her ministers—no sir; the proof shows that the clergy of Trinity do not receive but about one half of the salary that is paid by other churches to some of her reverend persecutors. And yet these faithful ministers of Trinity may safely challenge comparison with any others in the world in the extent and value of their labors. While the wealthy citizens have moved up town, the poor have been left, scattered through the lower part of the city. With these poor are Trinity and her chapels filled, and among them are the faithful ministers of Trinity laboring for good. They give them

instruction and advice ; they pray with them ; they baptize their children and bury their dead. Where else on earth can you find a body of men whose duties are more faithfully or more successfully discharged ?

Mr. Chairman, if her wealth is to be divided it will of course aid the other churches in the city of New-York, your own among the rest—but she becomes at once powerless to do good beyond the limits of the city ; not another dollar could ever afterwards be given to the country churches. Divided among fifty churches in the city, there would be no more property for each than it would desire for its own purposes. The fable would then be realized of cutting down the tree to enjoy the fruit.

Those who serve in the vestry of Trinity to dispense this charity are men of the highest standing in the community in which they live. For 160 years the affairs of Trinity Church have been administered by a long line of eminent men with integrity and liberality. The purity of their motives has never been questioned, it is conceded, even in your ex-parte report, founded on suspicion and hearsay evidence. I am told that Mr. Jay, an opponent of the views and policy of Trinity Church, admitted in a pamphlet published last year, that no great trust was ever administered for so long a time with such unsullied purity. Assailed though the Church has been at different times by rapacious claimants, it has manfully resisted them, and faithfully protected the fund, till, by the increase of the city, it has become a large estate.

Mr. Chairman, has not such a party when accused, a claim not only upon your justice and forbearance but on your respect? Does not the community owe it its thanks for all the good which it has accomplished ?

Gentlemen, the case is now before you. The evidence is to be printed. Thank God, there is a spirit abroad that demands it, and that will secure for it an impartial consideration. We

are ready to abide by the result. The verdict that the public shall render cannot fail to be a triumph to those men who, with no interested motives, and with no desire except to accomplish the greatest practicable amount of good, have given their time and their services gratuitously in the vestry of Trinity Church for the benefit of mankind.